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ABSTRACT

Designed to encourage informed and critical thinking on contemporary political issues and processes, the articles, case studies, and activities in this student handbook can be incorporated into secondary school social studies units on government or current events. Eight chapters cover the presidency, the federal bureaucracy, the Congress, the Supreme Court and the judicial branch of government, special interest groups, the media, the electoral process, and federalism. Within each chapter, articles written by Republicans, Democrats, liberals and conservatives, public officials and private citizens convey a balanced picture of America's diverse political environment. A case study in each chapter illustrates how the major political actors and institutions operate. Topics covered include the controversy at the Environmental Protection Agency, the desegregation of public schools, media coverage of the Vietnam War, and President Reagan's budget and tax battles with Congress. Appendices contain a glossary and a copy of the Constitution. (LP)

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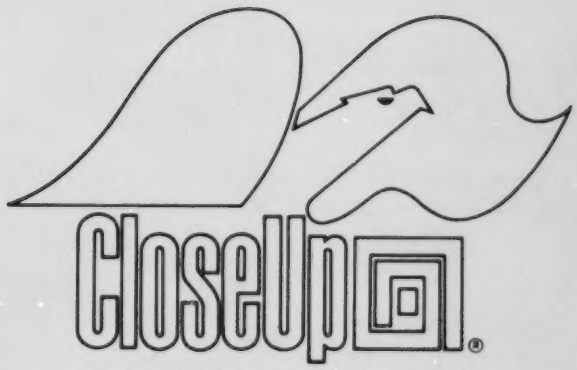

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The Close Up Foundation

The Close Up Foundation is a nonprofit, nonpartisan organization dedicated to encouraging the involvement of young people in the democratic process. The Close Up Foundation has no affiliation with any branch of government, political party or interest group. The Foundation's board of advisors includes representatives of both political parties and many political viewpoints.

The Close Up Foundation runs a Washington seminar program that brings high school students and their teachers to the nation's capital for a week-long, on-site learning experience. In the 1983-84 school year, approximately 17,000 young people and educators will participate in the CLOSE UP Washington experience.

In addition to the CLOSE UP Washington program, the Foundation publishes resource books and materials about American government, including *Perspectives,* a book of original articles written by policymakers and other knowledgeable insiders, and *Current Issues,* readable and balanced summaries of the major issues of the day. CLOSE UP also televises Washington-based seminars for use in classrooms across the country. In addition the Close Up Foundation sponsors local CLOSE UP programs for studying state and local government, parallel programs for international students and handicapped individuals during the regular sessions, and a teacher program designed to complement the student experience.

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What is Perspectives?

"I know no safer depository of the ultimate powers of the society but the people themselves. And if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education."
Thomas Jefferson

If there is one thing you should learn when you study government, it is that there are no simple questions or absolute answers. Instead there are countless "perspectives." The Founding Fathers understood this when they designed our system of government to ensure that many points of view would be heard. **Perspectives** is based on the same principle. The articles in **Perspectives** were written by Republicans and Democrats, liberals and conservatives, private citizens and public officials. No one article will give you the complete picture, but together they paint a balanced and colorful portrait of American government today. Factual information in the form of charts, tables and diagrams, accompanies the articles to give you added insight.

A special feature in **Perspectives** is eight case studies that illustrate how the major political actors and institutions operate, not in theory but in reality. The case studies include such topics as the controversy at the Environmental Protection Agency, the desegregation of public schools, media coverage of the Vietnam War, and President Reagan's budget and tax battles with Congress. We think you'll find that the case studies add meaning and depth to the study of political institutions and personalities.

We hope that you will use the information you find here as you begin to formulate your ideas and opinions about government—your perspective—and that you will be encouraged to take an active part in the political process. The future will be what young people make it. The issues of today require more than just participation, they require *informed* participation. Our hope is that **Perspectives** will help you take one step toward becoming an informed and involved citizen.

Perspective of a Public Man

An Interview with Hubert Humphrey

The late Senator Hubert Humphrey was a leading figure in American government for more than 30 years. He served as mayor of Minneapolis, United States senator, vice president and was the Democratic party's candidate for president in 1968. He was an outspoken champion of civil rights, a strong advocate of nuclear disarmament and the author of much legislation on both domestic and foreign policy issues.

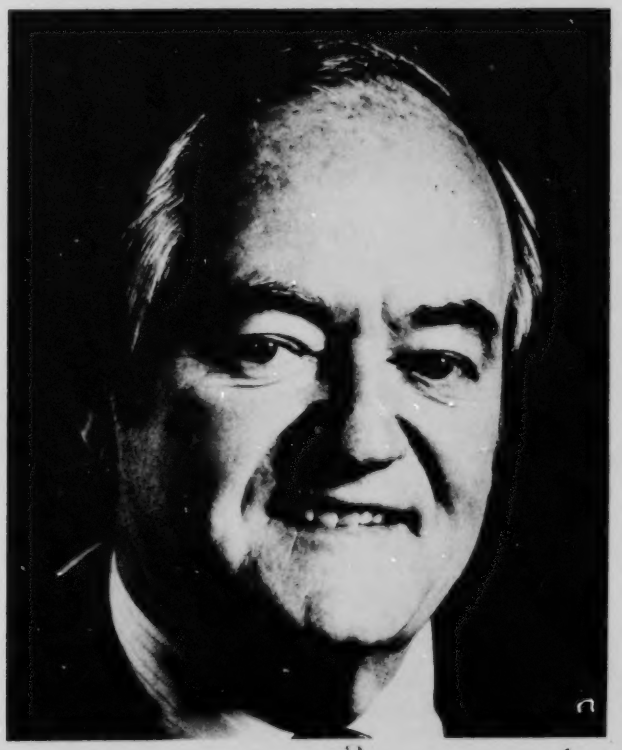
In this interview with CLOSE UP, conducted in 1977, Senator Humphrey discusses his long experience in public life and the importance of inspiration and motivation in effecting change.

CLOSE UP: Senator Humphrey, in one of the early chapters of your autobiography, *The Education of a Public Man*, you spoke of your father and his unshakable faith and "sense of wonder" about America and the American political system. Do you see that same kind of faith, that same sense of wonder in Americans—particularly in young people—today?

Senator Humphrey: I see it in young people. Young people are still idealistic. Young people are still imaginative. Young people are still filled with hope. They have dreams. But all of this is battered by the constant barrage of the bad news of the world. They are constantly told that things are bad; that politicians are corrupt; that the church is corrupt; that business is corrupt; that labor is corrupt. Sometimes you're bound to get the feeling that if you're on the highway, you'll probably get run over.

Our times are times of uncertainty and ambiguity. We're trying to sort out the pieces. There aren't enough standards anymore, too many have been destroyed. Older people turn off and are not even cynical; they become neutral. The young, too, lose their idealism because there are no heroes anymore. You've got to have heroes.

But I'm an optimist and I think we'll make it through these times. More has happened in the last 25 years to affect the psychic makeup of humankind than in the previous 200 years. We are inundated with information and we are starved for philosophy. A person's judgment is said to be no better than his information. It is information and experience which make wisdom. But too many experiences, with no time for reflection, and too much information, with no time for evaluation, do not give you wisdom. They give you confusion!



"Hubert will be remembered by all of us who served with him as one of the greatest legislators in our history. He will be remembered as one of the most loved men of his time. And even though he failed to realize his greatest goal, he achieved something much more rare and valuable than the nation's highest office. He became his country's conscience . . . He taught us all how to hope and how to love, how to win and how to lose; he taught us how to live, and finally, he taught us how to die."

Eulogy delivered by Vice President Walter F. Mondale, January 15, 1978.

To put it another way, we don't have any idea of the "strategic concept" of our society—what it *really* is about. We need philosophy and time for reflection, for young people still do have a sense of faith. I see it in their radiant faces. When I talk with them about the things that *can* be, they get excited and are better able to come to grips with the things that *are*.

CLOSE UP: You've spoken about how things are and how they can be. We know that you are a grandfather concerned about the world in which your grandchildren will grow up. Looking toward the year 2000, what are your greatest fears for the future?

Senator Humphrey: My greatest fear is nuclear war. History tells us that man has never developed a weapon that he didn't use. Yes, we did use the nuclear bomb in World War II, but nuclear weaponry has become so widespread that the danger has increased. The technology, the knowledge of how to do it and the capacity to do it—especially now with the proliferation of plutonium—make nuclear war the greatest danger that mankind faces.

Another danger is the pollution of the physical environment in which we live. While it may seem that you can continuously pour sewage into a stream without anything changing, you eventually get to a critical point where—Bingo!—a little extra makes it absolutely dangerous and uninhabitable and infectious. This has been happening because our technology for the disposal of solid wastes has not kept up with our production of wastes.

Pollution of the water and air affects not only the immediate physical health of people, but also has long term effects on weather. Changes in the climate in turn affect the production of food and fiber. In the next few years this could be very, very critical.

Environmental protection goes beyond just the air and water. It also means protecting our land resources and our timber. Most of my generation and my parents' generation have been robbing future generations by using up the good topsoil, the forests and the mines. Instead of looking upon ourselves as the stewards of the common good, we have become exploiters of the common property. When I talk with young people, I say, "Look, when I tell you that we need to conserve water, we need reforestation and we need to protect the topsoil, I'm talking about what you and your children will need 50 years from now." The Gobi Desert was once a very fertile area; the same is true of the Middle East. That area really once was the land of milk and honey...and then it became a pile of rocks and sand because people didn't take care of the water resources or the trees and shrubbery. If we keep up our present exploitation of the environment, we can also invite such disaster.

I also want to mention the "social pollution" that comes with prejudice, poverty and discrimination. When people are set against each other, they build up habits and life styles that really pollute their minds. For some, their thoughts are the result of the stigma placed upon them because of their poverty, their race or their creed. As I've stated many times in speaking about housing, it's not enough to clean up the physical ugliness of the slum. You also have another problem. If the people inhabiting them remain poorly educated and the victims of poor health, all you're doing is painting over—you're just whitewashing the filth and dirt without reversing the social pollution.

CLOSE UP: How do you see America's role in the world changing? While we may have been the world policeman in the past, are we now emerging as a leader in such areas as food and human rights?

Senator Humphrey: It isn't only that our role in the world has changed. The world in which we have a role has changed. That's the critical point. The role that we played for many years after World War II was necessary for the times. It wasn't as if we were bashing people's heads in; we were trying to help people from having their heads bashed in. We were misguided at times, no doubt, but our instincts were right. Now the world has changed. It isn't a colonial world any longer. Today it is a world of independent nation-states that have emerged from the period of imperialism and colonialism. We have to understand that they are very sensitive, highly nationalistic and proud. We're still a world power and we're the greatest world power, but we're not the only power.

Our current role in the world is a much better one. We're teaching people how to produce food, not just how to train armies and police forces. We ought to be doing much more than we are. Our role in the world today ought to be that of the healer, the doctor, the educator, the engineer and the humanist. We ought to be a nation of builders, not of destroyers.

While we should never underestimate our role, we need to realize that because we are so powerful we must also be humble. We need a sense of humility and self-discipline. We've got to be careful that we are not arrogant, but by the same token we must not be demeaning of ourselves. Young people need to know that America is respected throughout the world.

Our position in the world today is a much better one because we're becoming citizens of the world. Most

"Our role in the world today ought to be that of the healer, the educator, the doctor, the engineer and the humanist."

members of my generation never travelled out of our own state. Today young people see more of America in one month than I saw in 30 years. They also come to know much more about other countries at a younger age than we did. And that's good.

CLOSE UP: All of the problems and policies that you have been discussing emphasize the need for leadership of the highest caliber in the halls of government. What are the qualities which make someone an effective leader of the people?

Senator Humphrey: Motivation. The difference between a great president and just a president is whether or not he can motivate people to greater achievements. As Teddy Roosevelt said, "You have to make the White House a bully pulpit." You have to be a combination of educator and evangelist. You have to move people. What we need in our society today is a kind of clarion call. People also need to learn to have priorities, because you can't do everything. That's where leadership comes in.

As a senator, I've always felt that my job is more than passing legislation. I see my role in politics as being the cutting edge of progress. I've spent most of my time out with the people, planting ideas by talking with hundreds of audiences. I've taken a lot of razzing for it, but I have my own methodology. I've tried to be a teacher as well as a senator. To do this you have to take your message out to the people. To be a teacher, you have to have more than a classroom, you've got to have students. You've got to have more than a rostrum, you've got to have people who will listen and you have to make your message sufficiently simple and yet profound. The good teacher is the one who knows

"As a senator, I've always felt that my job is more than passing legislation. I see my role in politics as being the cutting edge of progress."

how to simplify great, difficult problems and, at the same time, make them interesting so that he holds his audience. You have to recognize that it requires repetition. You must keep in mind that people can only absorb so much at any one session. You repeat, repeat, repeat with adaptation so that you make it interesting. It's like a song: Even the most beautiful classical music maybe has just two or three themes in it, repeated time after time in different variations. That is what a leader, what a teacher, has to do.

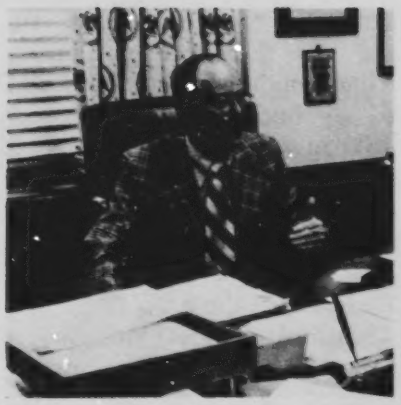
Another part of being a leader is being willing to run the risk of unpopularity. I don't like people in public life, particularly as presidents, mayors and governors, who can't make decisions. You have to make decisions.

Sometimes people come to me and say, "Well, the reason I have to vote like this is that the Gallup poll showed this or that." The Gallup poll is a momentary, current, unscientific survey of what is called public opinion. The important question is, "What do you think is right?" Now you don't ignore public opinion, but if you have a strong conviction, you do it. I, for example, had a strong conviction about civil rights legislation. There wasn't much public opinion on my side—I'll guarantee you that—and surely not among the political powerhouses. I ran right smack bang into all of them. But I felt I was right. And, if you feel you're right, you stay with it. Yet you also recognize that you can't get everything you want on day one. It may be a long, arduous process.

CLOSE UP: Every time that you come to speak to our students it is apparent that you are a hero to them. At a time when so much is negative, you represent something very positive. How do you keep your perspective? How do you keep from getting discouraged?

Senator Humphrey: When I look around, I don't find the world to be all that negative. There are times that I do get discouraged, I have to be frank. Sometimes the world seems nothing but arms sales, terrorism, instability and fear. The Protestants and the Catholics are fighting in Ireland; the Moslems and the Jews in the Middle East. If you add it all up, it does look pretty dismal.

But the other side of the coin is that nothing comes easily, and there are a lot of good things happening. In our own country, despite all of the problems that we face, people actually do live better than ever before. That's a fact. There are more people who have the op-



portunity for an education, and are receiving some health care—not nearly enough—but better than 25 to 50 years ago. More people today have begun to feel a sense of pride in their own identity.

We're still a very young people; a country with only 200 years of independence is still very young. And we've accomplished a great deal. We've shown the way. We have made representative government work, and that's a major achievement. There's great mobility in American society. Britain has a parliamentary democracy, but it has a class society. The French have class hostilities and ideological bitterness. Our problems are big too, but they are still manageable.

Think about what we have gone through since World War II. First that war and all of the economic change and cultural shock; the growth of our population; television; the incredible breakthroughs in science and technology; the airplane; Korea and Vietnam; the breaking up of empires and the taking on of responsibility for world leadership; and the mass migrations from rural to urban America.

In the last 30 years, over 30 million people have moved from rural to urban America, the greatest migration of people that the world has ever known. Nobody ever planned for it. When Cuban immigrants and Vietnamese refugees came to this country, we had programs for their orientation, training, job placement, everything. But we never understood that blacks and Chicanos were moving from a segregated society of poverty into what they thought was going to be an unsegregated society.

Let me read you something from my little book here, written by deTocqueville. Here is something every American should realize, and it's written by a Frenchman who visited here 140 years ago. He says, "The sufferings that are endured patiently as being inevitable become intolerable the moment that it appears there might be an escape. Reform only serves to reveal more clearly what still remains oppressive and now all the more unbearable. The suffering, it is true, has been reduced, but one's sensitivity has become more acute." This is what we call rising expectations, and we have rising expectations in our country. Every society that is alive has rising expectations. The interesting thing is that our rising expectations are still within the framework of a social structure.

I think the greatest testimonial to America was what happened in the 60's and early 70's. We had the civil rights revolution with its tremendous social, physical and economic impact. We endured the Vietnam War, which nobody understood or wanted; we wondered how we got into it and didn't know how to get out. And then a president and a vice president brought disgrace to themselves and defiled their offices. A whole constitutional crisis on top of everything else and we lasted. We not only lasted, we changed for the better. It is not worse, it is better. The government is better. Life is better for blacks today. It isn't as good as it ought to be, but it is better, lots better.

But there are some great dangers, as I mentioned earlier. Another one is the loss of a sense of community. Here's what deTocqueville says on loss of community: "Each of them living apart is a stranger to the fate of all the rest. His children and his private friends constitute to him the whole of mankind. As for the rest of his fellow citizens, he is close to them, but he sees them not. He touches them, but he feels them not. He may be said at any rate to have lost his country."

The dehumanization of urban life is like that. When you can see someone down in the gutter who has been beaten down, and walk by and leave him there and won't help him, you've lost your sense of community. People sense this loss. That's why they are trying to escape, in a sense, to find new areas of living. That's why they're again beginning to build neighborhoods.

Most everybody needs the kind of security that comes with the comfort of a neighbor and a friend and a community, an identity. That's not weakness; that's very

desirable. There is something to the neighborhood school and the neighborhood church, and there is something to the neighborhood business. We've put in supermarkets and big shopping centers and big superhighways. Sure, they are all much more efficient and move you faster. When you get down to it, though, is it more just, do you feel better, is it more kind? The answer is no.

CLOSE UP: What advice would you give to young people who mught be contemplating careers in politics, about the pitfalls and the rewards of public service?

Senator Humphrey: When you are involved in anything, you have to expect criticism. You have to constantly ask yourself, am I prepared to do that? You can always run away from problems and hide out; many people do. If you are going to be involved, you must be willing to be criticized for your inadequacies and your limitations. This is especially true in public life, where you are constantly under examination.

Some young people today feel that it isn't worth it. Why go through all the sweat? Why put up with it? Let somebody else do it. But they forget that politics is another word for people. Politics is the people's business, particularly in a democracy. If the people don't take care of their business by participating, by getting involved, then they will "get the business." While you may not think that your individual effort amounts to much, remember that every person sitting on the sidelines gives those that are involved that much more power.

I always try to point out that while great decisions may carry the name tag of one or two leaders, in fact many more people are involved. Great decisions are the products of a kind of digestive process that takes place in the whole society, in which all individuals can express their feelings on new ideas and plans.

In this process, we look to the younger generation, to those who are filled with the love of life and with bright ideals. They've got to contribute. If they are involved, then politics will really be the people's business.

1. The Presidency

"His is the only national voice in affairs. Let him win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him."

—Woodrow Wilson

"The buck stops here!"

—Harry S Truman

One of the intense debates at the Constitutional Convention concerned how much power the president should have. The Revolutionary War had been fought against the tyrannical rule of King George III. Many delegates to the Convention feared that if they provided for a strong head of state, a new tyrant would emerge. But the delegates had also experienced the disadvantages of a weak leader. One of the main reasons for the collapse of the Articles of Confederation was the lack of a strong federal government and chief executive. In the end, the Convention reached a compromise and created a system with a relatively strong president whose powers were to be checked and balanced by two other branches of government—the legislative and judicial branches.

The presidency has evolved over the years in response to the changing needs of the times. President Reagan is the head of an enormous bureaucracy, commander-in-chief of two million men and women who serve in the armed forces, the representative of the United States to the world, initiator of most major legislation, chief economic planner and much more.

With the new demands and responsibilities have come new problems and issues, but some of the old questions remain. Has the president become too powerful? Do the checks and balances established by the Constitution hamper the effectiveness of the president? What should we expect of a president? The following chapter explores the responsibilities of the modern presidency and examines the way in which those responsibilities are being met.

In This Chapter

Harry McPherson
Presidential Personalities
A noted Washington attorney who has served in several administrations discusses how the personality of the president influences his effectiveness.

An Inside View
A Discussion with Gerald Ford
The former president talks about the presidency in this wide-ranging interview with students and scholars from the American Enterprise Institute for Public Policy Research (AEI).

Richard Cheney
Congress, the President and Foreign Policy
President Ford's chief of staff, now a Republican congressman representing Wyoming, discusses attempts by Congress to limit the foreign policy authority of the president.

Jim Leach
The President's Partner in Foreign Policy: Congress
A Republican congressman from Iowa and one-time foreign service officer argues that Congress is a necessary check against unwise foreign policy decisions by the president.

Working in the White House—
A Conversation with White House Aides
Four top Reagan White House aides, James Baker, Edwin Meese, Larry Speakes and David Gergen, talk with CLOSE UP students, about their jobs and the influence they have on presidential decisions.

Evelyn Small
Pennsylvania Avenue Is a Two-Way Street
The former director of congressional communications in the Carter White House examines the relationship between the president and Congress.

Case Study: The Presidency
Presidential Power: How Reagan Won the Budget Battle
In his first year in office, Ronald Reagan won passage of his entire budget and tax cut package, showing more skill at influencing Congress and the public than had any other president since Lyndon Johnson. This case study examines the tools of the presidency that Reagan used.

Words to Know

accountability
administration
checks and balances
congressional liaison
emergency powers
executive agreement
executive order
impeachment
impoundment
override
separation of powers
supply-side economics
veto

Presidential Personalities

Harry McPherson

Harry McPherson, a Washington attorney, has been on the staff of the Senate, the Pentagon and the State Department, and also served as special assistant to President Lyndon Johnson. He is the author of a book, A Political Education. *In this article he addresses the question of how the personality of the president influences his effectiveness.*

Much of the literature about the American government resembles an architect's blueprint. The president, the Congress and the courts are described in structural terms drawn from the Constitution and proceeding through various laws that define the responsibilities of each branch.

This is understandable in a government that is founded on a basic document to which almost everyone pays homage. It emphasizes both the firmness of our institutions and the fact that each is limited by law and by the powers of the others.

Yet describing the presidency only in such terms is like describing a whale as a large, oceangoing animal. It leaves out the drama of the living being, the interaction between it and its environment, the tides and weathers of history that continually surround it.

The drama is not "abstract." Sometimes a novelist or playwright will write about an important event in the White House, and, in describing various personalities, will introduce a figure known as "the president." He seems made of granite: handsome, gray-haired, unruffled, well-tailored; he speaks in somber tones a language that seems to come from Mount Rushmore. He may once have laughed, cursed, run a race and fallen in love, but now history has descended upon him and deprived him of any but sober thoughts. He plays a dignified role, while all about him lesser mortals get angry, make mistakes and in general behave as you and I do.

There is a little truth in that picture. Many of the men who were elected to the presidency, or who were thrust by fate into it, have been so conscious of its importance and traditions that they have acted in public more like dignified role players than like living and breathing human beings. President Johnson, for example, was a man of almost volcanic energies, a teller of amusing stories and a caustic critic. But in public he often appeared to be addressing a church convention on the subject of original sin. One felt that in his eyes this was more "presidential."

But the real shortcoming of most fictional presidents is that they do not seem to effect changes in the nation they help to govern, or to be affected by events.

IMPERIAL PRESIDENCY
LIMO SERVICE FOR STAFF
RUFFLES AND FLOURISHES
SECRET SERVICE VALET SERVICE AND ODD JOBS FOR ASSORTED V.I.P.s
HAIL TO THE CHIEF
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"HE SEEMS TO HAVE THIS IDEA THAT HE CAN DO THE JOB WITHOUT US"

They are not "strong" presidents who assert the primacy of the chief executive—his authority to take action in the national interest, whether or not the action is specifically prescribed by the Constitution; nor are they "weak" presidents, who yield to the Congress or the courts, and take the narrowest view of their powers. They are simply talking heads, as they say in television, with the Great Seal of the United States beneath them.

In fact, the personalities of the men who have occupied the White House have had a considerable effect on the nature of the presidency. So have events in the nation and the world. Together, personalities and events have produced a presidential history that

often bears little resemblance to the office described in structural terms.

Lincoln is on every list of great presidents. He was a Republican, and his portrait always graces the Republicans' convention hall during election years. Republicans describe themselves as the party of limited government. Yet Lincoln, under the pressure of events in the Civil War, ordered the writ of habeas corpus suspended in some areas, and approved the opening of mail in search of subversive activity. He was a strong president at a time when weakness would have been catastrophic.

Franklin D. Roosevelt was a Democrat, a member of a party whose early leaders included Thomas Jefferson. Jefferson was a firm believer in states' rights. He feared the domination of local government by a strong central government. Yet Roosevelt, taking the helm in the worst depression we had ever faced, introduced federal laws and requirements into many areas of national life that state government had controlled in the past. He centralized much authority in Washington because the national economic emergency, and later World War II, required a unified national effort. His personal courage in the face of crippling polio and his spirit of optimism helped to give millions of his fellow citizens a similar courage and sense of hope in troubled times. And no doubt those qualities caused people to be willing to entrust the national government with powers that it had not asserted before.

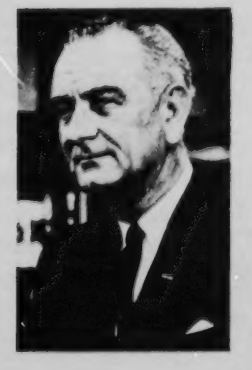
Sometimes it appears that a president can achieve a certain result precisely because those who fear that result trust him not to go too far. For example: In the 1950s there was widespread hostility toward dealing with the Soviet Union in any but the most belligerent way. At the same time, thinking people recognized that the two superpowers, America and Russia, must reach some kind of understanding about the danger of nuclear war. Because people trusted President Eisenhower, the former supreme military commander in Europe, to look after America's security interests, they supported him when he spoke in conciliatory terms to Soviet Premier Khrushchev.

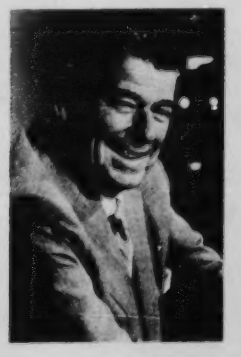
Similarly, the president who was able to renew relations with communist China was Richard Nixon, who had for decades been among the most vocal opponents of "softness" toward communism. If Nixon thought we should deal with China, his supporters thought, America was not being sold out when he did so.

Lyndon Johnson, the first genuine southerner to become president since the Civil War, led the breakthrough to strong civil rights legislation. His civil rights stand was partly due to his need to establish his credentials as a national leader. Once he was elected to the presidency, that political need, together with his energetic desire to improve the conditions of life for poor and deprived Americans, helped to bring about widespread changes in voting rights, employment opportunities and social welfare for millions of people. Being a southerner actually helped him achieve these goals.

It is an old political notion that voters more often vote against someone than for someone else. A corollary to that is that voters often swing from one idea about government to its opposite: from "liberal" in one election to "conservative" in the next; from a desire for more federal government programs to an ardent desire for fewer of them; from a wish for an "old-shoe" president—as in President Carter, who occasionally made television talks dressed in a cardigan sweater—to a wish for more pomp and ceremony in the White House. After the turmoil and corruption of Watergate, the voters chose the smiling Christian Jimmy Carter. Four years later, after the confusion and disarray of the Iranian hostage crisis and the apparent inability of the United States to do anything about it, they chose Ronald Reagan, who conveyed a feeling of certainty and determination. It remains to be seen how they will react to four years of President Reagan's economic and foreign policies when the 1984 election comes around.

But what is certain is that the personalities of presidents, and the events that bombard the White House during their terms, have much to do with shaping the office of president—as much, I would argue, as the powers and responsibilities prescribed for the office in the Constitution and laws of the land.





A Discussion with Gerald Ford

An Inside View

One of the best ways of learning about the presidency is by listening to what presidents themselves have said about the office. On March 25, 1977, eight students from Princeton University had an opportunity to meet with former president Ford. Along with their professor, Fred Greenstein, and three resident scholars of the American Enterprise Institute (AEI), they discussed with President Ford various aspects of the American presidency.

Q: What do you believe are the most important qualities for being a successful president?

President Ford: I believe that integrity is mandatory. I mean in the broadest sense, not just in matters of money. That transcends everything else, really. If a president has integrity in the widest possible connotation of the word, I think he gets off to a good start.

There are other important traits. I think a president has to have confidence in himself—not an overbearing confidence but confidence in a decision after he has thought it out and has had the options presented to him. I happen to think that confidence is, to a substantial degree, based on common sense—not just on intellectual capabilities but on how to evaluate, how to judge, how to read into something, whether it is on paper or the spoken word. A president must develop a sense of security when he has made a decision involving two options or five options, after having the case presented and after looking at the alternatives. He has to be confident that he has had all the tools available, that he has used them and that he has selected the right option.

Q: Mr. President, one phenomenon we have witnessed in the past 10 years is what some people call the "democratization of Congress,"—that is, the fact that the congressional leadership is not nearly so powerful today as it was, say, in Lyndon Johnson's day or even in your own. How does the increased independence of the senators and representatives affect a president's relations with Congress?

President Ford: When I came to the Congress, Sam Rayburn and Joe Martin were alternating as speaker of the House, and of course Lyndon Johnson, with his party continuously in the majority, became the leader of the U.S. Senate.

When I served in the House, members would sometimes object to the way Sam Rayburn or Joe Martin spoke for the majority or the minority party, or, as speaker for the entire House. A member might think he had been elected just as the speaker had been and that the speaker should not have such prerogatives. But it was an orderly House, and the president could deal with that kind of arrangement and that kind of leadership in an effective way.

Then the pendulum swung and the House became more "democratized." The members felt that they had gained more active participation, but the president found it much more difficult to deal with 535 people rather than with the speaker and the leaders of the two political parties. Relations between the Congress and the executive branch became strained—in many cases I think unnecessarily—and the job was getting done less effectively because no president can deal individually with 535 members or even with half that number.

I oftentimes wished, when I was president, that the

leaders could carry out what I knew was their view. But when I was president, the members of the House had become more independent and the leaders no longer had the power that Sam Rayburn had.

To summarize, when I was president I would have liked Congress to be the way Sam Rayburn or Lyndon Johnson or Joe Martin ran it. When I was a House member—one of the troops, not a leader—I would have preferred it the way it is today.

Q: Mr. President, one of the problems that students of American government are perplexed about is who, if anyone, can control the federal bureaucracy. Congress seems unable to control all of it. Originally, the president was thought to be the person to control it, but that seems to have changed. Is it possible to control this bureaucracy at all?

President Ford: Let me make one categorical statement. We have about 2,100,000 federal civilian employees, and I would say some 90 percent of them are able, dedicated, highly qualified people. What I say about the system does not apply to the individuals in it.

Congress certainly does not control them. In fact, I think one can honestly say that over the last five years, Congress has created more bureaucracy by enacting legislation that mandates certain expenditures for more personnel. The Congress has made no honest effort to reduce the bureaucracy. In effect, by the laws it passed and the appropriations it imposed on presidents, Congress increased the problem.

In my judgment, the Congress is primarily responsible, not only for the number of people employed, but also for the rules and regulations under which a president or the Cabinet officers are not allowed to replace people. I think a president ought to have a little more flexibility further down in the bureaucracy, as to both the people appointed and those that can be dismissed.

The American voters select a president because of what he says or promises, or his philosophy, but if he cannot reach into the bowels of a department, his decision way up at the top will seldom be adequately implemented out in the grassroots. A president ought to have more flexibility, but Congress, I think, is going the other way.

Q: Mr. President, since you are familiar with both the office of the president and specifically Richard M. Nixon, what do you feel were the root causes of President Nixon's downfall? Does a president need to be actively on the lookout to avoid those problems which contributed to the end of his presidency?

President Ford: I would rather not get into any discussion of Mr. Nixon's problems. But let me just relate the question to my own experience.

I think a president has to have absolute faith and truth in the individuals he picks to work in his administration. If he has selected the right people, he should not have to look over their shoulders every day to see if they are doing the right job. I think we had a good Cabinet, one of the best since I have been in Washington, so I did not have to worry about abuses or illegal actions or things that were, perhaps, unethical. And I think that is what a president has to do. If he gets the right people to work for him, then the dangers that arose in several administrations won't pop up.

Q: Mr. President, earlier you said that you thought the president was being increasingly limited by Congress in the field of foreign affairs, which, I take it, would make the president less capable of acting quickly. Have you seen any evidence that our allies are concerned about a lessening of presidential power, or that our adversaries are encouraged therefore and are more adventuresome?

President Ford: I think that both conclusions are inevitable—both by our friends and by our adversaries—because they are legitimate conclusions. If a president of the United States, the most powerful nation in the world, cannot act with speed and determination in a military crisis, that would inevitably encourage the adversary and raise concern among our allies. Congress ought to get off the president's back in the field of foreign policy. Congress can declare war; the president cannot declare war. The president is commander-in-chief according to the Constitution. Congress cannot be commander-in-chief. The Congress ought to exercise its own responsibilities and let the president do his job under the Constitution.

Q: One institution we have not discussed yet is the press. Could you comment briefly on whether you feel you got a fair shake in daily press coverage during your presidency? Also, did you consider the format of the debates during the campaign adequate for communicating to the American people?

President Ford: I always had good personal relations with members of the press when I was in Congress and when I was vice president and president. That does not mean that they agreed with me or that I agreed with them. That does not mean that I liked every story I saw or every headline I read. I am sure they did not like some of the decisions I made, but we had a good

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"We dissipated the angry attitude that people had toward the government and toward one another. If I were to write my own summary, that would be what I am most proud of..."

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personal relationship in 99 cases out of 100. I understood their responsibilities and they understood mine.

On the average, I received as good treatment as any president could expect. No president should expect to like every morning newspaper he reads over his span of service, whether it is four years or less. In fact, one of the luxuries of being out of office is to read the morning newspaper and say, "Gee, I'm glad I have no involvement with that mess in Washington." That is usually the way the press writes it, because a headline that is dismal or dramatic is better than one about the good things that take place. Even though we liked one another—and I think we did, in the main—I did not expect the press to write nice things just because we had a good personal relationship.

You asked about the debates. I think they ought to be institutionalized in the campaign. As to whether the format we used in 1976 was the best, I have not studied it in detail or looked at other options. I have no real objection to the way the debates were done and I have heard of no alternative that would convince me to change the format.

Q: Mr. President, how often did you rely on your own conscience in making decisions and how often did you rely on the views and information given to you by various pressure groups—whether they were in the Congress, the press, the bureaucracy, or more traditional lobbying groups? What do you feel should be the impact on presidential decisionmaking of different pressure groups and a president's own conscience?

President Ford: It is hard to be totally certain whether conscience or some other factor matters more. Some subjective feelings about certain things or certain issues are bound to play a part. In my case, I had a combination of what I thought were good recommendations from people in the administration and my own background and personal convictions. It was a combination of the two—options that came to me and my own experience and convictions—that ended up in whatever decision I made.

"Congress ought to get off the president's back in the field of foreign policy."

Q: Mr. President, do you think it is possible for one man to leave a permanent mark on the institution of the presidency? If so, what do you believe was the personal stamp you left on that office?

President Ford: The most difficult problem we inherited was the total division within the country, the angry mood, the turmoil, plus a number of very serious international problems. Over a period of time, by keeping cool and getting good people to do the job in each and every department, we dissipated the angry attitude that people had toward government and toward one another.

If I were to write my own summary, that would be what I am most proud of and what I would want history to record as an achievement of my administration.

Know the Powers of the Presidency

History books often focus on the great men and women of different eras, whose ranks include many presidents who led the nation through periods of change or major crises. We study the Washington era, the Jacksonian age, the Lincoln government, the Roosevelt administration, the Kennedy years . . . .

But to understand how our government has changed over the course of 200 years and how it functions today, we need to understand the differences between the president, the man, and the presidency, the institution. Article II, Section 1, of the U.S. Constitution established the procedures for choosing a president. In Sections 2 and 3 the powers inherent in the presidency, to be exercised by whomever was elected president, were established. While different presidents have interpreted these powers in different ways, it is still true that there are certain powers inherent in the presidency. Changing social, political, economic and international conditions have caused an expansion of these powers by different presidents in order to meet changing national needs.

Twelve important powers of the presidency are listed below. List at least one example from history that demonstrates the use of each power by a president. Give the president's name and the event you have chosen. Be prepared to explain your reasons.

President's Name	Event	
_____	_____	1. Commander in chief
_____	_____	2. Make treaties
_____	_____	3. Nominate ambassadors
_____	_____	4. Nominate executive branch officials
_____	_____	5. Nominate Supreme Court Justices
_____	_____	6. Power to pardon
_____	_____	7. Recommend legislation to Congress
_____	_____	8. Execute the laws
_____	_____	9. Veto legislation
_____	_____	10. Issue executive orders
_____	_____	11. Invoke executive privilege
_____	_____	12. Make executive agreements

Congress, the President and Foreign Policy

Richard Cheney

Representative Cheney (R-Wyo.) has been a member of Congress since 1979. He formerly served as chief of staff to President Gerald Ford. In writing about the foreign policy powers of the president and the Congress, he has the advantage of having seen the issue from both sides. How might his experience in both the legislative and executive branches of government have influenced his views?

In April 1975, as South Vietnam stood on the brink of collapse, President Ford faced a legal and political dilemma. Thousands of American citizens stood in the path of advancing North Vietnamese forces. United States troops would have to evacuate these Americans and the Vietnamese who worked with them. However, in seven different laws enacted after withdrawal of U.S. combat forces in 1973, Congress had forbidden any use of U.S. troops in Southeast Asia. Moreover, in the War Powers Resolution of 1973, Congress had required the president to consult "in every possible case" before using U.S. troops abroad. But as enemy troops began to enter the city of DaNang, all of the key congressional leaders were away from Washington on their Easter recess. With time running out and lives hanging in the balance, President Ford ordered U.S. troops to carry out the evacuation.

The situation President Ford faced highlights the growth during the 1970s of congressional restrictions on the powers of the president in the area of foreign affairs. Today, by one count, there are more than 150 such restrictions. Among other things, Congress has restricted the president's power to send U.S. troops abroad, to sell arms to foreign countries, to provide foreign aid and to conduct covert operations.

Many of these restrictions are a reaction to the alleged abuse of presidential power during Watergate and the Vietnam War. At a deeper level, however, they also reflect the division of powers in the Constitution itself. The founding fathers gave both the Congress and the president a share of the foreign policy powers. They made the president the commander-in-chief and gave him the power to negotiate treaties and to receive and appoint ambassadors. The Congress, on the other hand, was given the power to ratify treaties and confirm presidential appointments.

Throughout our history, the pendulum has swung back and forth between periods of presidential and congressional leadership in foreign affairs. During this century, both Congress and the president have played the leading role at different times. After World War II, the pendulum swung back toward presidential leadership. By the 1970s, in the aftermath of Vietnam and Watergate, Congress again was playing a more active role in foreign affairs.

Today, we need to ask whether or not the greater role of Congress over the past ten years has been good for the country. On balance, have congressional actions helped or hurt U.S. interests? I believe that the following four examples point out some of the problems with congressional involvement in foreign affairs and with restricting the president's power.

Vietnam: After the signing of the Paris Peace Accords in 1973 and the withdrawal of U.S. troops, Congress prohibited the use of U.S. combat forces in Southeast Asia. When, in early 1975, the North Vietnamese violated the Paris Accords and launched a major offensive, President Ford's hands were tied. Congress even rejected the president's request for emergency assistance for the Vietnamese. While it is impossible to say that South Vietnam could have been saved, congressional actions probably sped its downfall. Congress took away the threat both of U.S. military action and of increased U.S. assistance, either of which might have restrained the North Vietnamese and encouraged the South Vietnamese.

Angola: In late 1975, a Soviet-backed group assisted by 5,000 Cuban troops was gaining control of the African country of Angola. President Ford wanted to step up U.S. assistance to other groups more friendly to the West. In December 1975, however, Congress voted to prohibit the president from providing assistance to any of the groups competing for power in Angola. The Soviet Union followed this action by rapidly increasing its own assistance and pouring in more Cuban troops. I believe that in blocking further U.S. assistance, Congress was telling the Soviet Union that it could have a free hand in Angola.

Turkish Arms Embargo: In July 1974, Turkey invaded the island of Cyprus after Cypriot military officers, backed by Greece, overthrew the Cypriot government. Following the invasion, the United States tried to bring Greece and Turkey together to negotiate their long-standing dispute over the island. When the negotiations stalled, Congress voted in July 1975, after intensive lobbying by Greek-American groups, to cut

off arms sales to Turkey. Turkey responded to this pressure by ordering the United States to stop using important military and intelligence facilities in Turkey. Instead of helping the Cyprus negotiations, Congress ended up damaging U.S. security interests.

Jackson-Vanik Amendment: Through quiet diplomacy in the early 1970s, Secretary of State Kissinger had persuaded the Soviet government to increase the number of Soviet Jews allowed to emigrate to Israel. In 1974, some senators and congressmen wanted a public pledge from the Soviet Union to allow 60,000 Jews to leave for Israel each year. To put pressure on the Soviet Union, Congress passed a provision named after its sponsors, Senator Jackson and Congressman Vanik, which linked increased trade with emigration. Although the Soviet Union wanted increased trade with the United States, it called the Jackson-Vanik amendment blackmail and refused to promise publicly to increase emigration. In fact, the Soviet Union proceeded to cut in half the number of Jews who were being allowed to leave. Congress' attempt to put pressure on the Soviet Union backfired.

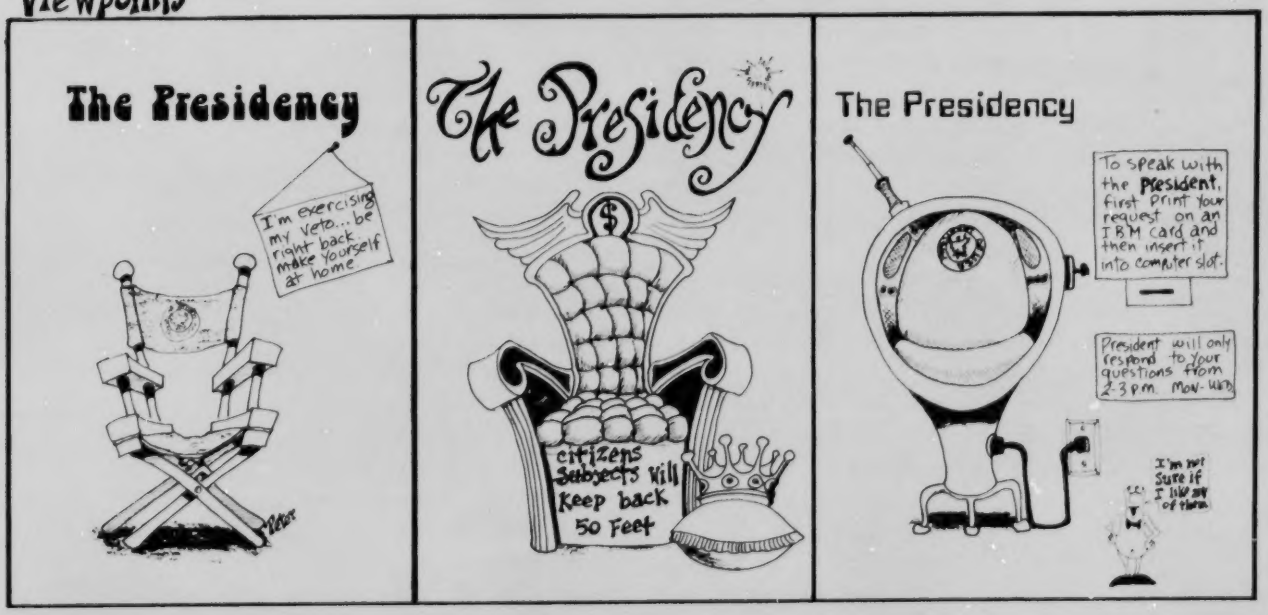
While I have selected these examples from the Ford Administration, Presidents Carter and Reagan have had similar problems. Congressional restrictions on their actions have complicated relations with a long list of strategically important countries, including China, Saudi Arabia, Pakistan, South Korea and South Africa. The record over the past three presidents shows clearly that Congress should not try to fine tune U.S. foreign policy by restricting the president.

Certainly, presidents have also made their share of foreign policy mistakes over the past ten years. However, the cure of congressional restrictions is worse than the illness. In restricting the president, Congress has made the United States less reliable as an ally; taken away the flexibility needed to respond to fast changing situations; let our adversaries know in advance the limits of our action; and provoked sharp reactions from countries that resent public pressure.

In the decade ahead, the United States will face serious global challenges. We can expect continued competition with the Soviet Union, tensions in the Middle East, unrest in the Third World and strains in relations with our allies. We will need a consistent, firm foreign policy to meet these challenges. Strong presidential leadership will be essential to such a policy. Rather than putting restraints on the president in foreign affairs, we will need to strengthen his hand. Congress can—and should—debate, criticize and recommend, but the president must plan and carry out foreign policy. As we look to a difficult future, we would do well to heed the advice of President Ford who said:

> There can be only one commander-in-chief. In these times, crises cannot be managed and wars waged by committee. Nor can peace be pursued solely by parliamentary debate. To the ears of the world, the president speaks for the nation. While he is ultimately accountable to the Congress, the courts and the people, he and his emissaries must not be handicapped in advance in their relations with foreign governments.

Viewpoints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The Presidency
To speak with the President, first Print your request on an IBM card and then insert it into computer slot.
President will only respond to your questions from 2-3 p.m. Mon-Wed
I'm not sure if I like any of them

The President's Partner in Foreign Policy: Congress

Jim Leach

Jim Leach (R-Iowa) has served in the House of Representatives since 1977. He is on the House Foreign Affairs Committee. Representative Leach formerly served as a foreign service officer and has had long and varied experience in international relations. In the following article, he discusses the sometimes competitive roles played by the Congress and the president in formulating U.S. foreign policy. Compare his views with those expressed in the next article.

The separation of powers among the executive, legislative and judicial branches is a fundamental feature of the structure of our federal government. The authority and responsibilities given to each of the three under the Constitution complement those of the other two, while the system of checks and balances guarantees that no one branch can dominate the others.

The aim of our founding fathers was to protect the fundamental principle that government should be by the consent of the governed. The result has been a healthy and productive tension between the office of the president, the Congress and the courts that has served our country well. In no area has this been more true than in foreign policy. Here the debate has centered on delineating the respective roles the president and the Congress should play in decisions governing our relations with other nations.

The relationship between the president and Congress in the foreign policy area is never static. It has changed over the years, depending in part on the times, in part on personalities and in part on the degree of public concern over specific issues. The relationship, however, is above all molded and constrained by the Constitution.

The Constitution gives Congress a number of explicit duties with regard to foreign policy. These include regulating foreign commerce, declaring war and raising and supporting the armed forces. Further, in giving Congress and particularly the House of Representatives control of the nation's purse strings, the authors of the Constitution made clear their intent that the legislative branch was to play a permanent and essential role in managing our foreign affairs. No policy proposed by the president or his secretary of state can be implemented without the passage by both the House and Senate of legislation appropriating the funds necessary to translate that proposal into effective action. Nor can treaties come into force without Senate ratification, nor ambassadors be appointed without Senate confirmation.

The international powers specifically granted the president by the Constitution are also not trivial. The president is commander-in-chief of the armed services and is empowered to negotiate treaties and appoint and receive ambassadors.

In practice, both the president and Congress from time to time have claimed responsibilities not specifically spelled out in the Constitution. This is particularly true of the chief executive. Because of the need to act quickly, particularly in emergency situations, presidents have asserted powers they have interpreted to be implied in the Constitution to take the lead in controlling foreign policy. This development is largely the result of the innate advantages associated with the office of the presidency. As John Jay wrote in *The Federalist,* Number 64, the unity of the executive, its superior information sources, and its capacity for secrecy and quick action give the president effective control over relations with other countries. Moreover, Congress is out of session almost as many days of the year as it is in session. While the State Department has from time to time been criticized as a sleepy institution, it in effect never sleeps. The president is always available to make decisions.

Relations between the Congress and the executive are not always cooperative. Sometimes this matters a great deal; sometimes it is not overly relevant. As Woodrow Wilson learned when the Senate rejected the Treaty of Versailles and with it participation of the United States in the League of Nations, Congress has seldom been simply a "rubber stamp" for presidential actions abroad. From World War II through the 1950s, however, Congress played a constructive bipartisan role in assisting the executive in initiatives such as the Marshall Plan and the establishment of the United Nations and the North Atlantic Treaty Organization (NATO). With the Vietnam war, Congress initially abdicated its independent role, symbolized in the Gulf of Tonkin Resolution*, and then slowly came to reassert independent influence and reflect the concerns

Editor's Note: The major escalation of American involvement in Vietnam began with the passage of the Gulf of Tonkin Resolution in 1964 after an attack by the North Vietnamese on American destroyers in the gulf off the coast of North Vietnam. It was used by Presidents Johnson and Nixon as the major justification for escalation and continuation of American involvement in Vietnam.

of a public demanding disengagement from Southeast Asia.

The Vietnam War and the shattering experience of Watergate served to remind Congress of its responsibility to provide a check against the unwise and unwarranted use of presidential power. Since the early 1970s, both the House and Senate have become increasingly intrusive in the foreign policy area. In addition to becoming more publicly critical of foreign policy decisions, Congress in the 1970s passed a series of laws which both restrain the chief executive and expand the Congress' policymaking powers.

Among the most important actions taken by Congress was the passage in 1973 of the War Powers Act. Enacted over then President Nixon's veto, the measure defined and limited the war-making powers of the president.

Under its provisions, the president can commit U.S. armed forces to hostilities abroad only pursuant to a declaration of war, specific statutory authorization or a national emergency created by an attack upon the United States or its armed forces, territories or possessions. The law also requires the president to report to Congress in writing within 48 hours of any commitment or substantial enlargement of U.S. combat forces abroad. Finally, the War Powers Act mandates the withdrawal of U.S. troops within 60 days after the president's report of their initial engagement, unless Congress has declared war, specifically authorized their commitment or been physically prevented from convening by an armed attack on the United States.

As the "people's body," Congress in recent years has increasingly come to assert a leadership role on issues historically considered the province of the executive. One such area is that of human rights. Congressional pressures were primarily responsible for forcing the Carter Administration to give human rights concerns high-profile attention. More profoundly, Congress has asserted itself actively in the arms control arena. After two decades of allowing arms control discussions to be quietly nurtured by a few presidential appointees at the State and Defense Departments, the American people have suddenly demanded that elected leaders in the legislature take a stand. Hence the surprise political issue of the 1980s is the nuclear freeze movement, and Congress through its capacity both to reflect and to generate public discussions has come to play a catalytic role in pressing the Reagan Administration toward arms control initiatives.

If the War Powers Act can be considered a declaration that war is too serious a business to be left to the president and a few generals, the nuclear freeze movement is a declaration that arms control and the maintenance of peace are tasks too important to be left solely to the president and his counterparts in the capitals of the world's other nuclear powers. Interestingly, the new pressure for arms control coming from Congress, largely the House of Representatives, in the 1980s, represents a reversal of the pressure against arms control, stemming largely from the Senate, in the 1970s.

It would appear at this point that the nuclear freeze movement is anything but a fad. It represents the deeply felt conviction of many Americans that, as the first generation in the history of the world capable of destroying itself, we have a profound obligation to develop and expand those institutional infrastructures apt to reduce the risk of nuclear conflagration.

Therefore, as unprecedented as it may be for Congress to address issues which impinge on the treaty-making powers of the president, the American people have come to demand a more activist role for Congress in foreign policy matters. In the short term there would appear to be no turning back. Congress is likely to remain a fuller partner in foreign policy determination than presidents will find comfortable, although perhaps no more than our founding fathers would have considered appropriate.

Working in the White House

A Conversation with White House Aides

During the 1982 CLOSE UP program year, CLOSE UP students had the opportunity to speak with White House aides James Baker, Edwin Meese, Larry Speakes and David Gergen. The following excerpts were drawn from the discussions with each individual.

CLOSE UP: A question frequently asked by students concerns the influence that presidential aides and advisors have on the president. How much influence do you feel you have on presidential decisions?

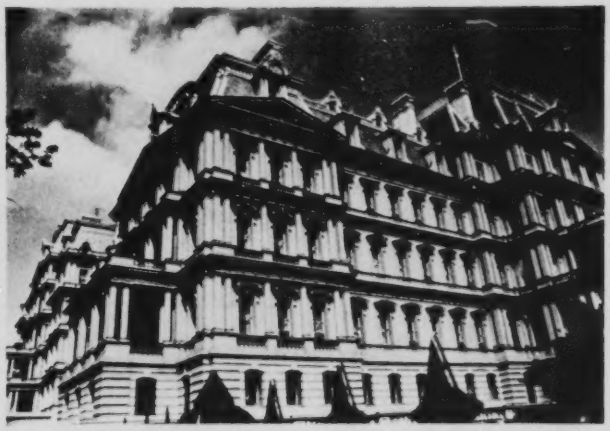
David Gergen, assistant to the president for communications: Every advisor is there to help a president. He's not there to try to sway a president in a particular direction. We did not elect the White House staff to run the presidency. We elected Ronald Reagan to run the presidency. When the voters went to the polls, Ronald Reagan's name was on the ballot. It wasn't one of his advisors. In that sense, he's the one who sets the direction. I think we're here to help.

I've had the experience of working for a couple of other presidents. I've tried to be a student of the presidency. This particular president more than almost any other in recent history has a very definite philosophy. He has a sense of what he wants to accomplish. He knows where he wants to go. He has talked about that philosophy for twenty years. When he was elected, people knew what he wanted and what he was elected to do. He was elected to shrink the size of government, to make it less intrusive in our lives and to restore respect for America overseas. And he has some very definite ideas about how to do that. So our job is to help him figure out how to do that best, not to set the goals, but to determine how to get from here to there.

Larry Speakes, chief deputy press secretary: I can give my opinion on whatever comes up. Sometimes it's taken and sometimes it's not.

James Baker, chief of staff: I don't feel that I must always agree with the president. I think that what the president is paying me for, in addition to my administrative duties, is to give him my best advice. The president doesn't want a bunch of yes men just sitting around nodding affirmatively. He wants you to give him your opinion. Having said that, I think it's important to point out that we all feel that once the president has made a decision, it is important that we not stray from that decision and that we all support it publicly.

Edwin Meese, counselor to the president: It's not the influence that I have, it's more the value of the information I provide. Ronald Reagan is a president who likes to get a wide scope of information on any issue.



Adjacent to the White House, the Old Executive Office Building is where most of the president's staff work.

He'll get information from me, he'll get information and advice from others; but he's the one who makes the decision. So it's not a matter of my trying to influence the decision as much as it is making sure that he gets full and complete information. Then he's very good at making decisions. He knows what impact a decision is going to have on people.

CLOSE UP: What are the duties of a presidential press secretary?

Larry Speakes: My job is to communicate the president's viewpoint to the press and, through the press, to the public. I'm there to spell out what he thinks on a given subject. I have a unique role in being the one person who is on the spot as far as answering questions about policy. Everyday we have a briefing of the press. You walk out, you stand before the press and you're asked questions on any subject. You have to know what you're talking about, and you have to not be afraid to say, "I don't know." So that's my job: to communicate what the president thinks, what he does and why we're doing it.

CLOSE UP: What are the responsibilities of the chief of staff?

James Baker: My duties as chief of staff are to make sure that administratively the White House functions as smoothly as possible. The White House staff is composed of 350 people; in addition, there are about 1,700 people in the Executive Office of the President. I have administrative responsibilities for all of them.

Secondly, I cover what I call the political side of the White House. All of the outreach functions of the White House report to me: public liaison, which deals with various interest groups; congressional liaison, which deals with members of Congress; and intergovernmental relations, which handles our work with governors, mayors, and other state and local officials. I am also responsible for the press office, the communications office, the personnel office and the counsel's office. Basically, I handle political matters and the implementation of policy, not the formulation of policy. That's handled by others.

CLOSE UP: How many hours do presidential aides work, and what effect do your jobs have on your family life?

Larry Speakes: The hours are long here. We work six days a week for the most part. We may get Sunday off if nothing big happens. I start at 7:00 o'clock in the morning and stay through the evening network news shows. I leave at about 8:30 or 9:00.

You're almost consumed by the job if you spend 14 to 16 hours a day at it. It's a difficult job. You have to realize that anything you say can cause a war, drive the stock market haywire or upset some part of the president's program. Nevertheless, if you get some time off with your family and you make that good quality time, I think it's a good trade-off. This has been an experience not only for me but for my entire family as well. My wife and my 11-year-old son have been able to participate in things that they would not have been able to if I had not had the opportunity to work in the White House. I think you have to take the approach that it's only going to last four or eight years, and then you're going to go on to something that will give you more time with your family and more leisure time. You have to work hard to protect your private life.

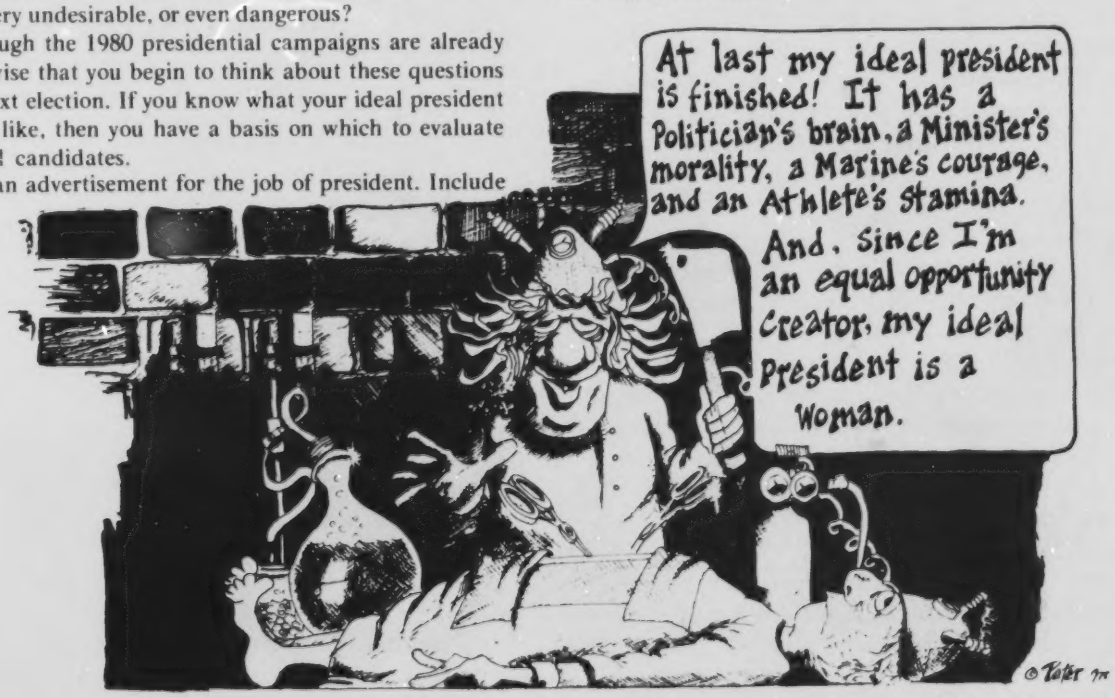
Political Eugenics: Creating An Ideal President

Often we criticize our presidents for not having this kind of experience, or that kind of style, or a certain kind of personality. Exactly what kind of person do we want to be our president? Aside from his political viewpoints, what character traits and experiences do we look for in presidential candidates? And what other characteristics do we consider as very undesirable, or even dangerous?

Although the 1980 presidential campaigns are already over it's wise that you begin to think about these questions for the next election. If you know what your ideal president would be like, then you have a basis on which to evaluate the actual candidates.

1. Write an advertisement for the job of president. Include your preferences for age, marital status, political party, education, sex, religion, previous employment and character traits.

2. After you have completed your advertisement, write down why you selected the qualifications. Compare your ideas with those of others.


At last my ideal president is finished! It has a Politician's brain, a Minister's morality, a Marine's courage, and an Athlete's stamina.
And, since I'm an equal opportunity creator, my ideal President is a woman.
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Pennsylvania Avenue Is a Two-Way Street

Evelyn Small

Evelyn Small was director of congressional communications in the Carter White House. In this article, written during the Carter presidency, she discusses the reduced ability of presidents to count on support from Congress and the increased need for communications between the White House and congressional leaders. As you read this article, think about how the relationship between the president and Congress has changed since the 1980 election and why.

Like most main streets in America, Pennsylvania Avenue is a two-way street. In the case of this famous avenue in Washington, D.C., traffic moves constantly in both directions. Included in the important traffic on this specific avenue is communication between the president and the Congress. Sometimes communication is difficult and the distance between the two institutions seems greater than the mile that it is. Reducing the distance between these two and making it easier to travel in both directions are tasks for those who work in the Office of Congressional Liaison at the White House.

The relationship between the president and members of Congress is a vital one to understand if we are to make sense of the American political system. The extent to which the president gets along with the Congress (and vice versa) depends on a lot of factors—including, for example, whether or not the president and the majority of senators and members of the House come from the same political party; whether they have similar ideas for solving problems; whether the president was once a member of Congress or is an "outsider;" whether the president is popular or not.

Executive-legislative relations have changed a great deal since our nation's founding fathers carved out roles for each branch of government. Indeed, one of the most widely recognized political phenomena of the 20th century is the growth of the legislative chief executive. This is an odd development for those of us who grew up memorizing that the legislature makes the laws while the executive administers them. Today the president has come to play an increasingly important role in the legislative process—that is, in lawmaking.

It is now the president who initiates major bills and programs and the Congress that responds and reacts. The president sets out his program and establishes his priorities. The press and other political observers wait for the president's policies and programs, and reporting focuses more on the president's bills and the president's budget than on those of the Congress. This is not to say that the power of the Congress has diminished, but rather that the American legislative process has assumed a joint character requiring communication and cooperation between the president and members of Congress—that is, a two-way street.

In the past decade many significant changes have affected the relationship between the president and the Congress. These have included changes within the Congress and within the whole political environment in which the president and the Congress operate.

As for the Congress itself, some numbers tell part of the story. More than half the members of Congress are newly elected, having served since 1974. And of these, 76 are what have been called "Watergate babies"—that is, freshman Democrats elected to the House in November of 1974.

In addition, the current Congress is made up of younger members than at any other time since World War II. In 1978, six of the eight most senior members of the House and three of the five most senior senators left the Congress. At the same time, eight new senators were elected who were still in their 30s. The "newness" of the 96th Congress and its relative youth have had an important effect on its operation. The younger members tend to be more independent and less inclined to follow a strict "party line."

Changes within the Congress also have greatly affected the relationship between the president and the legislative branch. In-house reforms have reduced the power of subcommittee chairmen. Consequently, there are more points at which bills can be stopped and started in the congressional system than there were under the tenures of Senate Majority Leader Lyndon Johnson or Speaker of the House Sam Rayburn, when there was tighter control by the leaders.

One of the most important factors affecting the relationship between the president and the Congress has been the rise of special interest groups. Lobbyists with these groups (which number in the thousands) constantly argue their cases to the members of Congress, providing them with information and arguments in favor of, or opposed to, some policy. This results in members who are better informed and allows members to present more effective arguments either in favor of or against the positions of the president.

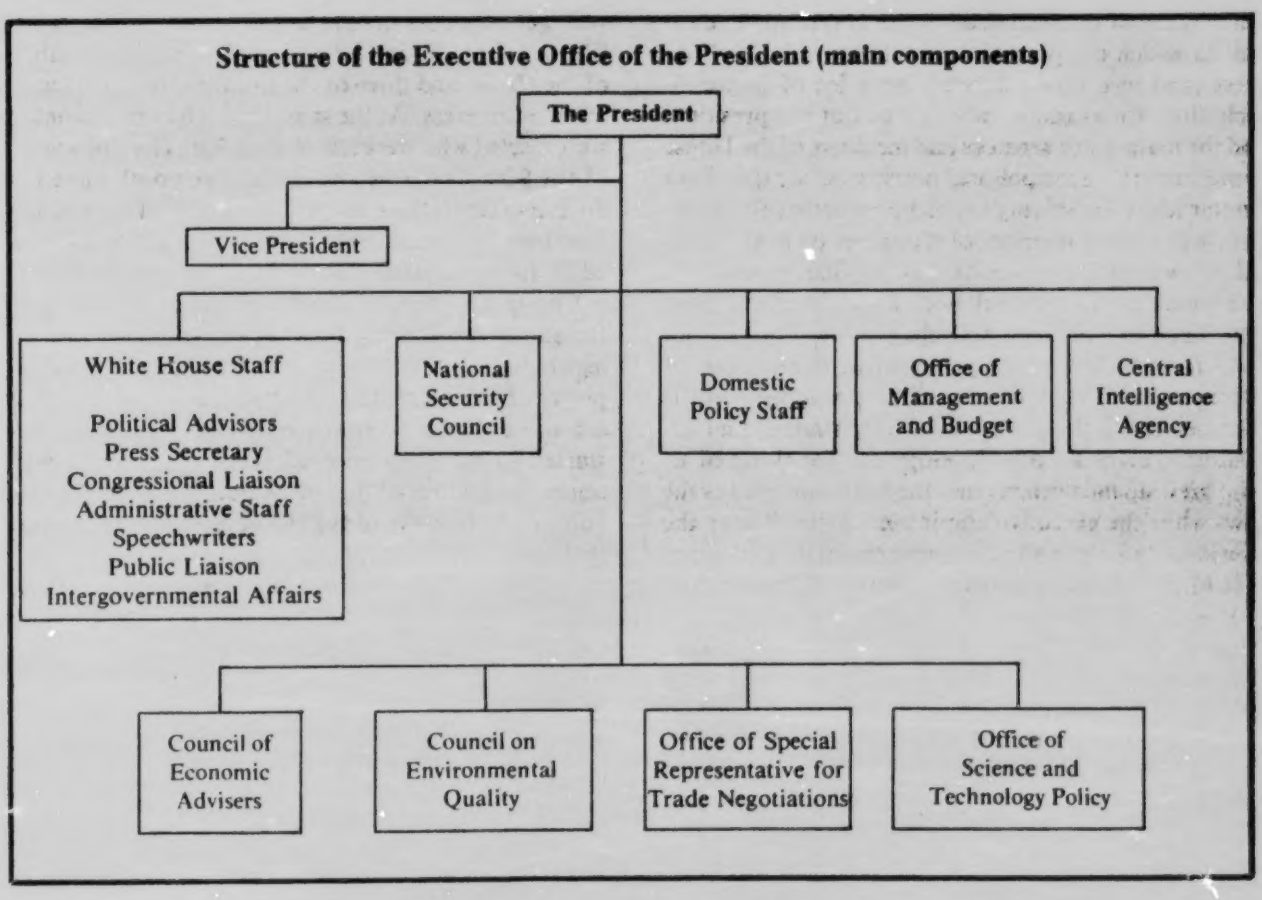
So what do these changes add up to? The president

must face the fact that his ability to influence Congress has been reduced by members who are more independent and more willing than their predecessors to buck the old rules of the Congress; by members who are more knowledgeable and therefore better prepared to present their case against that of the president; by "sunshine laws" which no longer allow members to keep their votes to themselves, thereby making it more difficult for members to take the side of the president if their constituents are lined up on the opposite side; and by the increased power of special interest groups.

In short, the president can no longer count on his party's support for every one of his positions on legislation. He cannot call on a single committee chairman to ensure that a bill will proceed "safely" through the entire legislative process. He cannot count on the speaker, majority leader or whips alone to line up all the necessary votes on the House or Senate floor. And yet, he must depend on the members of Congress for ultimate passage of his proposed legislation. This is why the Office of Congressional Liaison in the White House has become so important.

In an effort to ensure that the president's legislative program is adopted by Congress, all of us in congressional liaison try, as one of our staff members put it, "to win friends, maintain allies and keep potential adversaries from slipping into an opponent's camp." We provide a liaison—that is, a channel for communication to flow from the president to the Congress and from its members back to the president. This channnel allows the president to communicate his desires to the Congress and allows the members of Congress to have more of an input into the making of policy. Keeping traffic flowing in both directions on Pennsylvania Avenue is crucial in this era of the legislative president.

Structure of the Executive Office of the President (main components)



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Presidential Power: How Reagan Won the Budget Battle

This is the story of how President Reagan used the powers of his office to convince Congress to pass his 1982 budget and tax cut package. As you read, try to answer these questions:

- *How did the president use the media to convince congressmen to support his policies?*
- *Why was "grassroots" support important for the president?*
- *What personal and political inducements did the president offer members of Congress?*
- *How did the president's advisors help achieve the victory?*
- *What part did the private sector play in the budget battle?*

In 1981 President Ronald Reagan won congressional approval for his economic recovery plan, which in the end included $35.2 billion in budget cuts for fiscal year 1982 (the administrative year that began in October 1981 and ended a year later) and a 25 percent three-year tax cut. The proposal, the most sweeping economic package since Franklin D. Roosevelt's New Deal, was widely criticized after the details were released. The budget cuts threatened many powerful special interest groups; the tax cut was criticized for benefiting the rich more than the poor and middle classes. Furthermore, many members of Congress believed the tax cuts would increase the budget deficit and fuel inflation.

In spite of this opposition, the president believed in his plan, and using all of the tools available to the chief executive, successfully guided the package through Congress, demonstrating a mastery of Congress and the media unmatched since Lyndon B. Johnson pushed his Great Society programs through Congress in the 1960's. Reagan's victory was even more impressive because unlike Johnson, who worked with commanding Democratic majorities in both houses, Reagan's party held only a 53-47 advantage in the Senate and was outnumbered in the House 191-244.

The president overcame these obstacles first by using the media, especially television, to ensure grassroots support for his program. The president repeated over and over again the basic themes of his administration—an end to big government and burdensome regulation and a reinvigoration of the American system of free enterprise. He also used the prestige and power of his office to persuade some members of Congress to support him. For some members breakfast at the White House or a weekend at Camp David (the presidential retreat in the Maryland mountains) was enough. For others the president had to trade political favors for votes. The president's efficient White House staff helped, too—it mobilized allies around the country to place pressure on members of Congress.

The story of how the president won the budget and tax battles of 1981 provides a clear picture of the powers and limitations of the president and the relationship between the White House and Congress. To a lesser extent, this case study will show the pressures placed on the president and Congress by special interest groups and, in the case of the president, by presidential advisors.

The Supply Side Revolution

Throughout the 1980 presidential campaign, Ronald Reagan spread his special brand of economic gospel. Reagan preached the evils of President Carter's economic policies, which he defined as "an American tragedy." Carter's policies, according to Reagan, "damaged our economy much more than virtually anyone could have forseen. Interest rates and inflation have become unconscionably high. Almost two million Americans have lost their jobs this year alone. And the tax burden continues to steadily increase."

Reagan preached a new policy of *supply side economics.* This concept was developed by a young California economist, Arthur B. Laffer, and publicized by New York Representative Jack F. Kemp and economist George Gilder, author of the book *Wealth and Poverty.*

In his book, Gilder outlined the shortcomings of conventional economic policy: "When government gives welfare, unemployment payments and public-service jobs in quantities that deter productive work, and when it raises taxes on profitable enterprise to

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pay for them, demand declines."

Supply siders argued that massive cuts in the tax rates would "so stimulate business and so shift income from tax shelters to taxable activity that lower rates would bring in higher tax revenues," according to Gilder. Many supply siders argued for large cuts in federal spending, too.

When Reagan formally announced his economic strategy on September 9, 1980, in a campaign speech in Chicago, his policies closely resembled the goals for government set down by Laffer and Gilder. Reagan called for:

- Keeping the growth of government spending at "reasonable and prudent" levels. Reagan specifically proposed to "squeeze and trim" 2 percent out of the fiscal year (FY) 1981 budget, and 10 percent of what otherwise would have been spent by FY 1984, primarily "through a comprehensive assault on waste and inefficiency."
- Reducing personal income tax rates and accelerating and simplifying depreciation schedules "to remove disincentives to work, savings, investment and productivity." Reagan proposed an across-the-board reduction in personal income tax rates—10 percent in 1981, 10 percent in 1982 and 10 percent in 1983.
- Reviewing regulations that adversely affect the economy, changing them "to encourage economic growth."
- Establishing a "stable, sound and predictable" monetary policy.
- Restoring confidence by following a national economic policy "that does not change from month to month."

The president promised that his economic policy would be established and implemented during the first 90 days of his administration. But complicating the budget calculations was Reagan's promise to increase defense spending at least seven percent annually, after inflation.

Voters reacted positively to Reagan's message. Reagan carried all but five states and the District of Columbia, an overwhelming mandate in the eyes of the president's supporters. Many of them urged him to use the momentum he had gained from the election and the release of the American diplomats held hostage in Iran.

"The main thing is to start, and to start drastically and dramatically," said Caspar Weinberger, then a Reagan budget advisor. "It's absolutely essential to send a signal to the world that the United States government is firmly committed to fighting inflation and to restoring the strength of the American economy."

David Stockman, the Michigan congressman who would later become director of the White House Office of Management and Budget (OMB), submitted a memo to Reagan saying: "Things could go very badly during the first year, resulting in incalculable erosion of the GOP momentum, unity and public confidence. If bold policies are not swiftly, deftly and courageously implemented in the first six months, Washington will quickly become engulfed in political disorder commensurate with the surrounding economic disarray."

The new administration, committed to fast action on the economic package, first had to work out the details, even before Reagan was inaugurated. Stockman took over office space at OMB early and went to work cutting money from the FY 1982 budget that President Carter had submitted.

Through those early days, up until passage of the economic package, Stockman had many "off-the-record" conversations with former *Washington Post* editor William Greider. After passage of the package, Greider wrote about their conversations in the *Atlantic Monthly*. Greider wrote:

> The initial figures (Stockman received) were frightening—"absolutely shocking," Stockman confided—yet he seemed oddly exhilarated by the bad news, and was bubbling with new plans for coping with these horrendous numbers. An OMB computer, programmed as a model of the nation's economic behavior, was instructed to estimate the impact of Reagan's program on the federal budget. It predicted that if the new president went ahead with his promised three-year tax reduction and his increase in defense spending, the Reagan Administration would be faced with a series of federal deficits without precedent in peacetime—ranging from $82 billion in 1982 to $116 billion in 1984. Even Stockman blinked. If those were the numbers included in President Reagan's first budget message, the following month the financial markets that Stockman sought to reassure would instead be panicked. Interest rates, already high, would go higher; the expectation of long-term inflation would be confirmed.

Stockman used those "shocking figures" to shock the president-elect and his aides into taking the drastic actions Stockman felt were needed. Policy would have to move beyond Reagan's vague and painless campaign theme that eliminating "waste, fraud, and mismanagement" would be sufficient to balance the accounts. Now, as Stockman put it, "the idea is to try to get beyond the waste, fraud and mismanagement modality and begin to confront the real dimensions of the budget reduction."

On the first Wednesday in January, Stockman met

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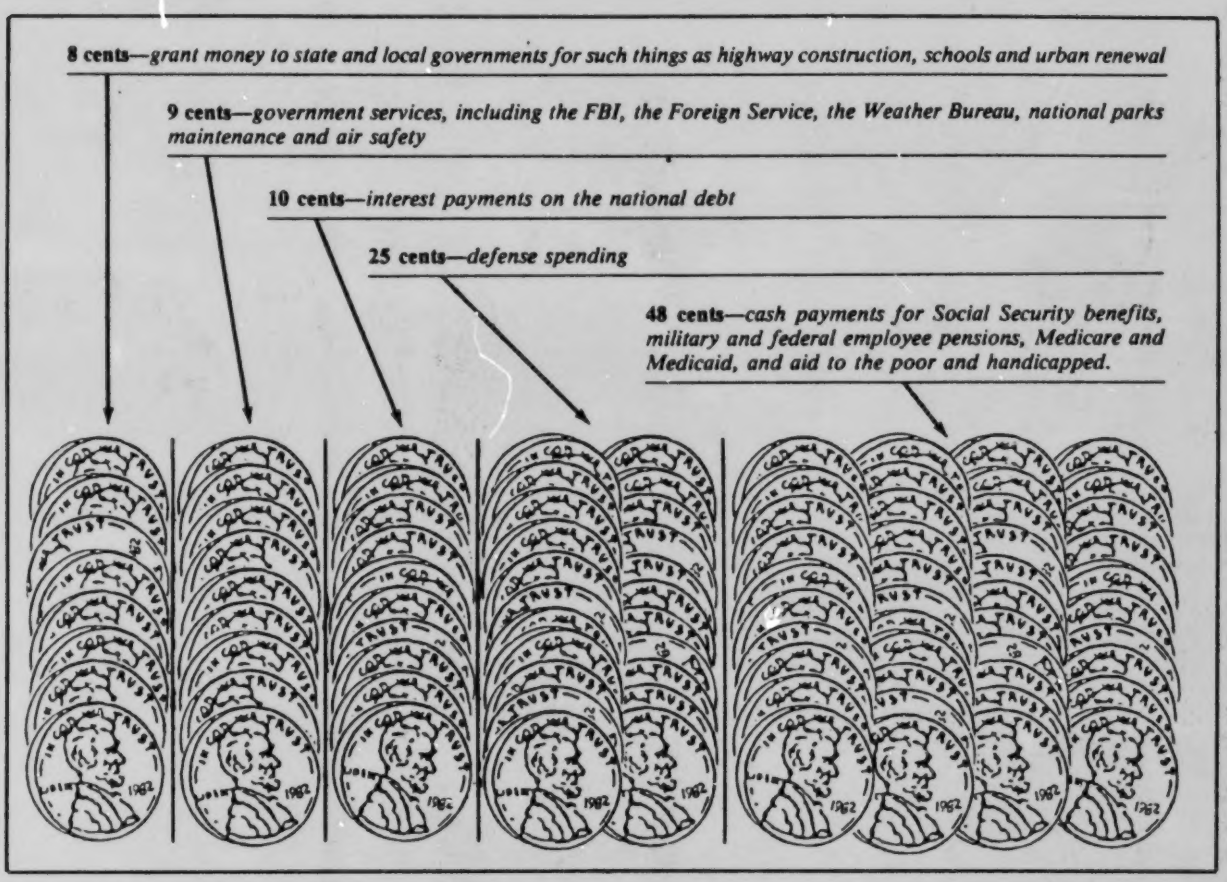
8 cents—grant money to state and local governments for such things as highway construction, schools and urban renewal
9 cents—government services, including the FBI, the Foreign Service, the Weather Bureau, national parks maintenance and air safety
10 cents—interest payments on the national debt
25 cents—defense spending
48 cents—cash payments for Social Security benefits, military and federal employee pensions, Medicare and Medicaid, and aid to the poor and handicapped.

with the president-elect for two hours, describing to him the "dire shape" of the federal budget. Budget reductions would have to be made in the neighborhood of $40 billion. "Do you have any idea what $40 billion means?" Greider quoted him as saying. "It means I've got to cut the highway program. It means I've got to cut milk-price supports. And Social Security student benefits. And education and student loans. And manpower training and housing. It means I've got to shut down the synfuels program and a lot of other programs. The idea is to show the magnitude of the budget deficit and some suggestion of the political problems."

The president was willing to take on the political burden of so many cuts. But the cuts would not come easily for Stockman.

Of the more than $700 billion in the budget, Stockman found little that could be easily cut. About 48 cents of every budget dollar pays for Social Security, pension checks to retired soldiers and federal employees, reimbursements to hospitals and doctors who provide medical care for the aged and poor, and welfare checks for the dependent. The next 25 cents goes to the Pentagon. That share Stockman expected to grow, rather than shrink, over the next four years. Another 10 cents pays the interest on the huge national debt, fast approaching a trillion dollars.

Essential services—such as the FBI, the Foreign Service, the Weather Bureau and national parks maintenance—take up 9 cents. The remaining 8 cents provides all the grant money to state and local government, including aid to handicapped children, highway construction money and urban improvement grants.

Reagan had partially tied the hands of Stockman, as Greider wrote:

> As he and his staff went looking for the $40 billion, they found that most of it would have to be taken from the 17 cents that covered government operations and grants-in-aid. Defense was already off-limits. Next Ronald Reagan laid down another condition for the budget-cutting: The main benefit programs of Social Security, Medicare, veterans' checks, railroad retirement pensions, welfare for the disabled—the so-called "social safety net" that Reagan had promised not to touch—were to be exempt from the budget cuts. In effect he was declaring that Stockman could not tamper with three fourths of the 48 cents devoted to *transfer payments*.

Winning the budget battle was not just a matter of numbers to Stockman, however. "It boils down

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President Reagan lobbying conservative House Democrats at his Camp David retreat in Maryland shortly before the tax cut debate. Pictured, from left to right are: Representatives Ike Skelton, Missouri; Billy Lee Evans, Georgia; Ralph Hall, Texas; the president; Eugene Atkinson, Pennsylvania; Jerry Huckaby, Louisiana; and Secretary of the Treasury Donald Regan.

to a political question, not of budget policy or economic policy, but whether we can change the habits of the political system."

Selling the Economic Package

The president's economic package had to be sold to several groups. First the American public had to be convinced. For that, the president went on television and sent emissaries around the country to speak to community groups. Congress had to be convinced—Cabinet members had to testify before congressional committees; White House lobbyists had to systematically meet representatives and senators to hear their concerns and explain the president's program. Governors and mayors had to be consulted. Most important to Stockman, Cabinet members had to agree to the cuts before they became too entrenched in their jobs and therefore too sensitive to the desires of the special interest groups that patronize their offices.

Stockman managed to gain the Cabinet secretaries' support by having each secretary meet with top White House advisors, who argued that even popular and useful programs would have to be cut back to achieve the president's budget goals.

Convincing the Cabinet to go along with the president was relatively easy compared to the task of convincing the public and Congress, however. With Congress, the White House had some reasons to be confident. In the view of the administration, the 1980 election provided a mandate for the president and his policies. This was especially clear to some members of Congress who saw how many conservatives defeated incumbent liberals. As a result, the Republicans had a majority in the Senate, and many new conservatives had been elected in the House.

But to win the budget battle, the Republican leadership would have to keep Republican votes and go across the aisle to attract Democratic votes. For this the Republican leadership counted heavily on grassroots pressure. The president's skill at persuasive public speaking was relied upon to generate grassroots support through television addresses.

On February 5, the president broadcast his economic policy address. Reagan prepared the public for the drastic measures he would soon be taking by describing the gloomy economic picture that Stockman's computers had unveiled a month before. "We are in the worst economic mess since the Great Depression," he said. "It's time to recognize that we've come to a turning point. We are threatened with an economic calamity of tremendous proportions, and the old business-as-usual treatment can't save us."

Newsweek magazine, reviewing his economic address, noted Reagan's use of framed family pictures on his desk and an occasional prop to make a point. "His speech was an effective piece of exhortation, combining his earnest performing skills with a text that bristled with persuasive examples, even when that meant bending some statistics or omitting contrary facts," said *Newsweek*.

The importance of the speech was clear to the administration. "To win this fight," Stockman said, "the president is going to have to generate a million cards and letters a month to the Congress."

Two weeks later the president submitted his economic proposals to Congress and addressed a televised joint session of Congress. His speech appealed to patriotism and American pride. "There's nothing wrong with America that we can't fix," he said.

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Even the title of his plan, "America's New Beginning," was calculated to stir "rally 'round the flag" feelings.

The public reacted favorably to the speech. Two hours afterwards, the White House tallied 996 phone calls, 899 of them favorable. After the first bundle of laudatory telegrams had arrived, the president showed them to his staffers. "You should really read these," he told them. "Some of them will turn you into a puddle."

Before the speech, Reagan's opponents had warned that the president's plan to cut taxes and increase defense spending would create huge budget deficits and spur inflation. Many Democrats called Reagan's supply side theories "voodoo economics," recalling the words of Vice President George Bush when he ran against Reagan for the presidential nomination. The only way the president would be able to afford the tax cuts and defense increases, the Democrats said, would be to make severe cuts in Social Security, Medicare and other social welfare programs. As a result, Reagan made a special point of promising the aged, handicapped and poor that "all those with true need can rest assured that the social safety net of programs they depend on are exempt from any cuts."

Although the president promised cuts in some popular programs, he defused critics by making sure that every special interest had something taken away. "I'm sure that there will be some who will raise the familiar old cry, 'Don't touch my program—cut somewhere else.' I hope I've made it plain that our approach has been evenhanded...."

Reagan threw down a challenge to the Democrats: "I would direct a question to those who have indicated already an unwillingness to accept such a plan. Have they an alternative which offers a greater chance of balancing the budget, reducing and eliminating inflation, stimulating the creation of jobs and reducing the tax burden? And if they haven't, are they suggesting we can continue on the present course without coming to a day of reckoning?"

As the *Congressional Quarterly Weekly Report* said, the speech put House Democrats in a "ticklish" situation. "If they fight too hard to save the programs Reagan wants to ax, the Republicans will blame them in the 1982 campaign for the failure of the president's program. If they don't fight hard enough, and the programs are abolished, they will have no accomplishments to boast of in 1982, and only themselves to blame," said the respected nonpartisan magazine.

Dan Rostenkowski, the Democratic chairman of the House Ways and Means Committee—which would consider the tax package and several other portions of the bill—expressed the Democratic dilemma differently: "We are still debating exactly what it was that the voters expressed at the ballot box last fall. But this much is clear: The public wants government to shed some weight—to dramatically reduce its expenditures and to reduce inflation."

The overall reactions from Capitol Hill were clamorous, as expected, but Stockman was "more impressed by the silences, the stutter and hesitation of the myriad interest groups," according to Greider.

"There are more and more guys coming around to our side," Stockman reported. "What's happening is that the plan is so sweeping, and it covers all the bases sufficiently, so that it's like a magnifying glass that reveals everybody's pores.... In the past, people could easily get votes for their projects or their interests by saying, 'Well, if they would cut food stamps and CETA (Comprehensive Employment and Training Act) jobs and two or three other things, then maybe we would go along with it, but they are just picking on my program.' But now everybody perceives that everybody's sacred cows are being cut."

(Actually, the administration preserved several programs, important to key congressmen and senators, in order to limit opposition. One such program left in the budget was money for the fast-breeder nuclear reactor at Clinch River, Tennessee. The nuclear subsidy had many critics, including Stockman, but Stockman left it in because the project was backed by Senator Howard Baker, the majority leader from Tennessee. "It just wasn't worth fighting," Stockman said. "This package will go nowhere without Baker, and Clinch River is just life or death to Baker."

The Republicans planned to convert public support for the president's programs—generated by the speeches—into political fuel to light a fire under Congress. One congressman who felt the heat early was Texas Democrat Kent Hance, who later cosponsored the president's tax cut measure. "Reagan won 72 percent of the vote in my district, and he's a lot more popular there now than he was on Election Day," Hance said. "It's mighty tough to go against a popular president in a district like mine."

The president wanted quick action on the bill. "It is my intention to move these budget cuts in less than a month," said Senator Baker. "Every day that this is delayed makes it more difficult to pass. This is an extraordinary proposal, and these are extraordinary times."

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The mood in the Democratic party, however, was to study the budget and tax cut proposals carefully to ensure that there would be no unexpected ill effects. "We don't want to have an economic Gulf of Tonkin resolution," said Representative Benjamin S. Rosenthal (D-N.Y.), referring to the 1964 resolution that began America's military involvement in Vietnam.

"At the meeting we had with the president last week, it was just unbelievable," said Thomas P. O'Neill, speaker of the House. "He said he wanted it on the floor in a couple of weeks. The president thought he was going to send us a message, (which) would go to the Ways and Means Committee and come out the same day. Whether he was serious or pulling my leg, I don't know."

To ensure rapid passage of the package, the Reagan Administration employed a little-used and less understood process known as *reconciliation*. The process was authorized by the Congressional Budget Act of 1974 as a device to reconcile federal spending with revenues. It packages budget cuts into a single bill so that specific programs cannot be spared, one by one, by special interest groups. It is immune to a Senate filibuster—the tactic of debating an issue until proponents wearily decide to *table* their proposal—because debate on the bill is limited to 50 hours. In 1980 it was used modestly, but Stockman considered it a vital lever for the Reagan program in 1981. "Reconciliation was the action-firing mechanism that overcame the natural inertia of Congress," Stockman said.

The administration first waited to see whether Congress would pass the budget bill through the normal legislative process, a long and complicated procedure. First, all authorizing committees in the House estimate the cost of programs they want for the coming year. They send their estimates to the House Budget Committee, which holds hearings and then writes a bill specifying the amount Congress can spend for certain major categories. Congress then votes on this first *budget resolution*. If it is approved, the authorizing committees work within those budget limits to set spending ceilings for projects within their domain.

At the same time the Appropriations Committee writes legislation determining how much money will be available for each federal agency. Congress then considers each authorization and appropriations bill.

The final legislation might or might not be consistent with the goals of the budget resolution, however.

In late February the House Ways and Means Committee, the committee that writes all tax legislation and manages the financing of Medicare and Social Security, held hearings on Reagan's tax cut plan. The Democrats challenged the particulars of the tax plan and Reagan's economic assumptions as a whole.

Representative Thomas Downey (D-N.Y.) said the administration's supply side economic theories—that the economy would quickly respond to large tax cuts—were "based essentially on guesses and estimates. I really believe a lot of their assumptions are hallucinogenic."

Treasury Secretary Donald Regan, responding to Downey's remark, explained why the administration believed the tax cuts would stimulate investment and increase tax revenues without causing inflation. "We decided to break with traditional econometric models.... Most are imprecise...very fallible," Regan said. "We took an economic scenario and drew certain conclusions based on a set of factors. What we did was create our own scenario, and from that we have judged that the inflation rate will be cut in half."

Texas Democrat J.J. Pickle was unconvinced, calling the administration's predictions "jellybean talk." Although major corporations and wealthy individuals would greatly benefit from the tax cuts, Pickle predicted that for average working Americans the tax cut would just be enough "to pay off their credit cards...or pay for a couple of trips to McDonalds."

The budget cuts and the administration's economic projections continued to receive scorn, but Reagan himself escaped that scorn. Most of the blame for cuts in such programs as student loans, school lunches, food stamps, Medicaid, heating fuel subsidies for the elderly and the Comprehensive Employment and Training Act (CETA) jobs program went to David Stockman. Early in March Senator Howard Metzenbaum, an Ohio liberal, told Stockman point-blank: "I think you've been brilliant, but I also think you've been cruel, inhumane and unfair. You're causing a perversion of justice for the poor and the middle class."

Attacks against Stockman were only part of the Democratic strategy. In March House Majority Leader James Wright circulated a nine-page analysis of the president's economic package, asserting that the program "imposes a grossly unfair burden on those least able to carry that burden, those Mr. Reagan describes as the truly needy." The memo urged Democrats to publicly dismiss Reagan's popularity ratings as "honeymoon numbers," not a mandate,

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and to say that the package would "use cuts in welfare programs to finance gigantic tax cuts for the rich."

Any gains the Democrats may have made in March were quickly erased, however. Support for the president's program mushroomed after Reagan was shot at the end of March. According to *New York Times* writer Hedrick Smith, Reagan's support was assisted by large doses of luck and coincidence. Smith wrote:

> His presidency was born in the special upsurge of national emotion that greeted the release of the American hostages from Iran. It got another boost from the successful *Columbia* space shuttle. Public sympathy and support rose further in response to his gallant geniality after the attempt on his life, an event that he turned to political advantage with a dramatic appearance before Congress. Further, Mr. Reagan has been spared any major foreign crisis so far and has benefited from a global oversupply of oil that has helped some to ease the fires of inflation.

While Reagan was recovering from the shooting, the administration increased the heat in local communities to gain rapid approval of the budget and tax cuts. They called upon one of the president's least visible, yet most potent, weapons: the political operation masterminded by White House Political Director Lyn Nofziger. Nofziger carried the budget and tax battles into the home districts of wavering members of Congress, softening them for presidential persuasion. Through their 15 years of traveling across the country promoting conservative causes, Nofziger and Reagan had developed an effective network of political activists.

"That's why Reagan is not a man to trifle with," asserted Lee Atwater, a South Carolina political organizer who was Nofziger's deputy. "He's got more people committed to him than anyone else. They're ready, able and willing to go into action at a moment's notice, and technically they're well organized."

Nofziger generated pressure during the budget fight in April by running a political blitz in the 51 key congressional districts, (45 of them in the South), where voters voted heavily for Reagan yet elected Democratic representatives. His organization tapped the resources of such groups as the Republican National Committee, the National Conservative Political Action Committee, the Moral Majority, pro-business political action committees linked with the National Chamber of Commerce, the National Association of Manufacturers, the American Medical Association, local civic clubs and scores of other groups interested in cutting federal spending and

A Chronology of the 1981 Tax Cut and Budget Battle

January 15
President Carter submits $739.3 billion fiscal year '82 budget to Congress.

February 5
President Reagan's televised address to the nation about the condition of the economy.

February 18
Reagan submits his economic plan—his $695.5 billion fiscal year '82 budget and his proposed 30 percent three-year tax cut—to Congress and then speaks to a televised joint session of Congress.

March 10
Reagan revises his budget to $695.3 billion.

April 9
Senate Budget Committee, 8-12, rejects Reagan's original economic package. Three conservative Republicans join the Democrats opposing the package on the grounds that estimated budget deficits were too large.

April 9
House Budget Committee endorses Democratic-sponsored alternative $714.6 billion budget, 17-13.

April 28
Reagan, recovered from his gunshot wound, makes his first public appearance at a televised address to a joint session of Congress, urges support for an alternative budget bill, Gramm-Latta ($688.3 billion).

May 7
House approves Gramm-Latta, 253-176.

May 12
Senate passes first budget resolution ($700.8 billion), 78-20.

May 14
Senate-House conferees agree on compromise budget bill ($695.45 billion). Conference report approved by both houses.

May 14 to June 12
Congressional committees work to revise federal programs to achieve cuts mandated by budget resolution (through the process known as reconciliation), working on a June 12 deadline.

June 25
Senate passes its reconciliation bill, 80-15.

June 26
Republican alternative reconciliation bill, Gramm-Latta II, survives key procedural vote, 217-211, and is passed by the House, 232-193.

June 27
Reagan, in a televised speech, calls on Americans to urge their representatives to support his tax cut proposal (modified to a three-year, 25 percent cut).

June 29
House adopts Reagan tax cut 238-195. Senate approves tax cut 89-11.

June 31
House agrees to reconciliation conference report by voice vote. Senate agrees to report, authorizing $35.1 billion in budget cuts, 80-14.

August 3 and 4
House and Senate approve conference report on tax cut.

August 13
President Reagan signs tax cut and reconciliation bills into law.

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taxes. Nofziger's effort was spearheaded by administration and congressional speakers and by workers using direct mail and telephone banks. Atwater explained:

> The premise of the operation is that political reforms and the impact of media have made it so that a congressman's behavior on legislation can be affected more by pressure from within his own district than by lobbying here in Washington. The way we operate, within 48 hours any congressman will know he has had a major strike in his district. All of a sudden, Vice President Bush is in your district, Congressman Jack Kemp is in your district, 10 of your top contributors are calling you, the head of the local AMA, the head of the local realtors group, local officials. Twenty letters come in. Within 48 hours, you're hit by paid media, free media, mail, phone calls, all asking you to support the president.

In early April the Senate, by an 88-10 margin, approved a budget-cutting package that was nearly identical to the administration's proposal, convincing Stockman of the vulnerability of special interest or "constituency-based" politics. Stockman was impressed by the cohesion of the new Republican majority in the Senate. For a full week the senators voted down amendments to restore funds for various programs—"voting against every motherhood title," as Stockman put it.

The Democratic-sponsored amendments were doomed after a moderate Republican attempt, led by Senator John Chafee of Rhode Island, failed to restore $1 billion for several popular social welfare programs in a 59-40 vote.

Stockman did not oppose the Chafee amendment because it wouldn't cost much overall and it would "take care of those people who have been good soldiers." But Senator Pete Domenici of New Mexico, the Senate Budget Committee chairman, decided that the accommodation wasn't necessary.

"Chafee was the one shot we had of making any inroads," said Senator Christopher Dodd (D-Conn.). "When that failed, any hope of making additional inroads went out the window." The later Democratic amendments were little more than "posturing," according to Dodd, though they were important as a way of getting conservative senators on record as opposing those programs.

"The Democrats want to establish a record for a year or two from now, when these programs are cut out. We want people to know that the issues were raised, and who took what positions," said Senator Patrick Leahy (D-Vt.).

The major battle then began in the House. Representative Jim Jones, the Democratic chairman of the House Budget Committee, built a budget resolution intended to hold the Democratic majority together. It embraced nearly 75 percent of Reagan's proposal but restored some money for programs Reagan had scheduled for extinction. The budget also exceeded the president's defense-spending goal and reduced the overall budget deficit below the level the White House had endorsed. This was achieved through tax increases that were not in the Reagan budget, and through different economic assumptions about how much income and profits tax people would pay.

Stockman called the package artful, but accused the Democrats of writing a resolution full of "gimmicks": economic estimates and accounting tricks. "Political numbers," he called them. However, Stockman cheerfully conceded to Greider that the administration's own budget numbers were constructed on similarly shaky premises, mixing cuts from the original 1981 budget left by Jimmy Carter with new baseline projections from the Congressional Budget Office "in a way that, fundamentally, did not add up," wrote Greider. "The budget politics of 1981, which produced such clear and dramatic rhetoric from both sides was, in fact, based upon a bewildering set of numbers that confused even those, like Stockman, who produced them."

Stockman had a good idea of what was in the Democratic bill, in part because he had a spy in the Democratic meetings—Phil Gramm, a Texas conservative. Gramm, who would later co-sponsor the president's substitute budget bill, became an important part of the Reagan strategy. Because Gramm was officially a Democrat, the president's budget package—with Gramm's name on it—could honestly be called *bi-partisan*.

The White House wanted to attract other Southern Democrats, who became known as *"boll weevils"* after the parasitic insect that breeds in cotton balls. The unofficial leader was Representative G.V. "Sonny" Montgomery, chairman of the House Veterans' Affairs Committee. Merely by ensuring that $350 million to $400 million for staffing at veterans' hospitals would be restored in the budget, the White House was able to convince Montgomery to join.

From his hospital bed, the president worked to convince other "boll weevil" Democrats to join his cause. To talk to Pennsylvania Congressman Eugene V. Atkinson, Reagan called a Beaver Falls, Pennsylvania, radio talk show where Atkinson was a guest. On the air in his first public words since the shooting, Reagan said Atkinson, who later quit his party and joined the Republicans and was subse-

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quently defeated in the 1982 elections, had "been most supportive, which proves that Democrats and Republicans can get along on things that are good for the country." Atkinson told Reagan he was interested in an alternative economic package put forward by conservative Democrats. "Oh, well, I think that's just great," Reagan said, indicating that he would support the alternative, named Gramm-Latta after its sponsors, Phil Gramm and Republican Delbert Latta of Ohio, ranking minority member of the House Budget Committee.

From then on it became clear that the White House would concentrate its lobbying on 40 southern Democrats it had identified as *swing votes*. Nofziger's army went to work, creating pressure in these congressmen's home districts. The administration enlisted eight conservative governors to pressure the swing congressmen.

By April 28, the day the president was to speak before a joint session of Congress, Democratic leaders said they counted on about 200 sure Democratic votes for the Jones budget.

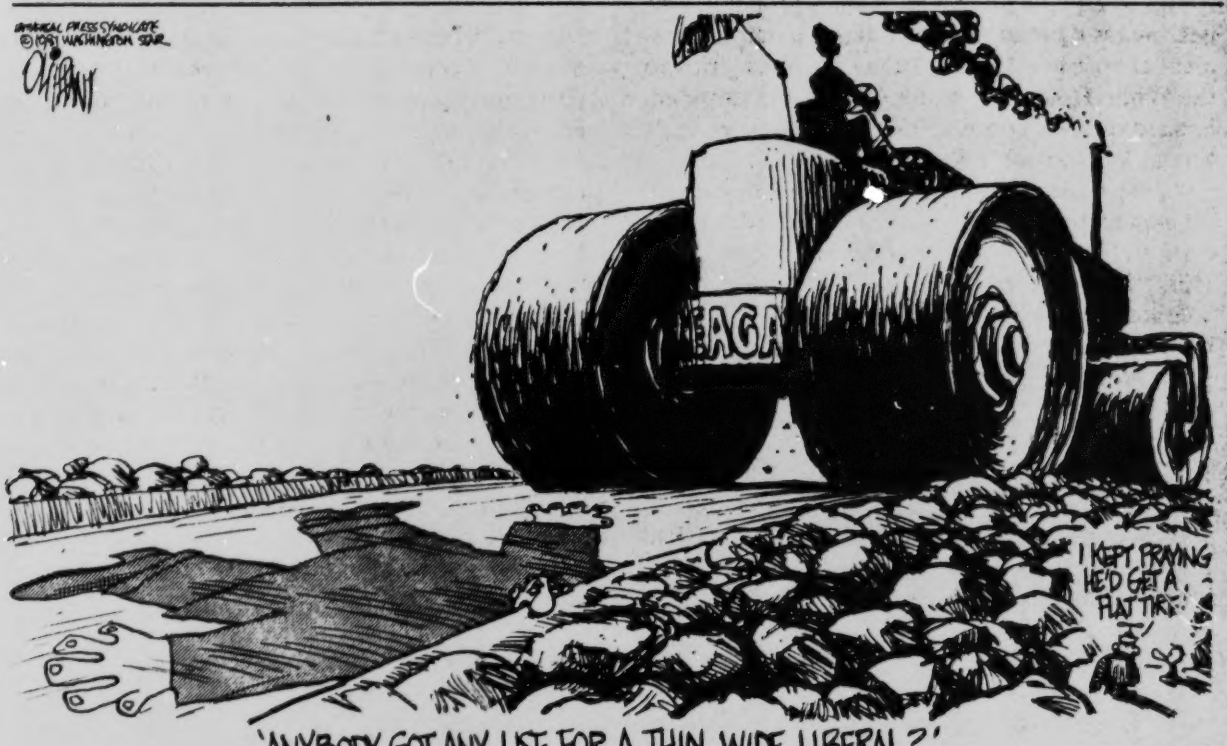
Republican leaders said they could guarantee virtually all of their 191 party votes. That meant that whoever won the swing votes won the budget battle. According to the *Washington Post*, the southerners "recognized and relished" their pivotal position.

Democratic leaders tried to reason with the group. Speaker O'Neill met with Gramm. Gramm told the *Washington Post* that he listened to the speaker but felt no sense of allegiance to his party's leader. "If you define the Democratic party the way the speaker does," Gramm said, "then there are virtually no Democrats in my district. My people think Ronald Reagan is right; they're on his side."

A few Republican leaders were uncomfortable negotiating with Democrats. "If I were Reagan, I wouldn't have a thing to do with those guys," said Representative Daniel B. Crane, a conservative Republican from Illinois, during the debate. "You look at their districts, those ought to be Republican seats. I would say they can go ahead, vote with Tip, and then we'll go into every one of their districts in '82 and say: 'Elect a Republican because this guy blocked the president's program.' And we'll have a majority in the next Congress."

The Republicans wanted to stoke the fire in these swing districts, so they pulled out their number one weapon—Ronald Reagan. On April 28 Reagan spoke before a joint session of Congress to urge passage of his economic plan. It was an emotional occasion because it was Reagan's first public appearance since the shooting.

"Aiming mainly to promote his budget and tax proposals, the president turned the occasion into a



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joyous public celebration of his recovery from an assassin's bullet," said *U.S. News & World Report*. "With lighthearted quips and fatherly reassurances, he drew thunderous ovations and, for nearly half an hour, held Congress and the public in the palm of his hand."

The president, almost gently, criticized the Democrats for spending too much and trying to balance the budget on "the taxpayers' back." "In short," the president said, "that (Democratic) measure reflects an echo of the past rather than a benchmark for the future.

High taxes and excess spending growth created our present economic mess; more of the same will not cure the hardship, anxiety and discouragement it has imposed on the American people.... Isn't it time that we tried something new?"

"The president drove a velvet steamroller through the Congress," said Representative Bud Shuster (R-Pa.). "He cleared the way for his supporters to carry his program on the floor, and even though he flattened his opponents, he did it in such a way that it was almost painless."

The speech did much to guarantee public pressure on Congress. The White House lobbying team did the rest. One method was to invite 60 Democratic representatives to the White House in groups of five to eight. The president applied a soft sell approach for up to an hour, then gave each a little blue box bearing his signature and containing a pair of presidential cuff links. Besides the cuff links, trips to the White House and Camp David, the president handed out free concert tickets for the president's box at Washington's Kennedy Center.

"Congressional relations is not just a haphazard, occasional thing with the president," said Max Friedersdorf, the chief White House lobbyist on Capitol Hill. "It's constant. He's very willing to take advice not only from the White House staff but (from) the congressional leaders (as well). Plus he's sold on his program and he transmits that enthusiasm in his contacts."

The "gentle persuasion" was enough to give Reagan a smashing 77-vote victory when the budget was considered. Minutes before the vote it looked close. But according to *Time* magazine, "an unspecified number of restive Democrats had pledged to stay with their party. (But) when they realized that their votes actually would make no real difference, they jumped to Reagan's side."

Before the defeat O'Neill tried to write the epitaph for a Reagan victory: "If the Republicans are unlucky enough to win today, I guess the monkey is off the Democrats' back.... They're the Reagan cuts. The deficit is going to be the Reagan deficit.... It's Reagan's inflation."

Reconciliation

After the budget resolution victory, the White House had two more battles to fight: First, the tax cut bill was just making its way through the Ways and Means Committee. Second, the administration had to make sure Congress would stick to the goals set in the budget resolution. These fights would be more difficult since the first budget vote was largely symbolic. Many congressmen would not vote so quickly to implement it.

By June, work in the House and Senate had progressed on reconciliation. The thirteen authorizing committees of the House had cut back existing and hoped-for programs to comply with the budget resolution. Simultaneously, the Republican minority members of those committees had quietly drawn up their alternatives, which would later become the administration alternative, Gramm-Latta II.

Administration officials, especially Stockman, worked hard to ensure that the House Republican draft would not differ too much from the version the Republican Senate was working on. "If the House and Senate produced drastically different versions of the final reconciliation measure, there could be a conference committee between the two chambers that would include hundreds of members and months of combat over the differences. Failure to settle quickly could sink the entire budget-cutting enterprise," Greider wrote.

On June 18, 1981, Stockman met with the president and pressed hard for him to challenge the House Democratic leaders by rejecting the Democratic reconciliation bill and sending over a second package of his own. Stockman's major concern was that although the Democratic reconciliation bill had cut more than $37.76 billion, many of the cuts were "phony": that is, they left money in some programs Stockman wanted to eliminate entirely, and made only $3 billion worth of cuts in entitlement programs (such as Medicaid and food stamps) when the administration wanted $8 billion. The conversation was described by Hedrick Smith in the *New York Times Magazine*: "The committees have broken faith with the first budget resolution," Stockman argued. "What they have done is sadly deficient. It could jeopardize your entire economic program. We have to make a major fight to restore the provisions in your first budget."

Other aides cautioned the president about the per-

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ils of treading on congressional prerogatives. "We just have to understand we're running a very great risk here," warned James A. Baker, the White House chief of staff. "If we throw down the challenge and lose, it will sap our momentum," said David R. Gergen, the communications director.

But Stockman insisted that letting the Democrats leave eligibility and entitlement rules unchanged would cause major federal programs to grow automatically in future years. The president agreed, and by noon that day the White House had swung into action. At lunch the president met with members of his staff, Republican leaders and four of the dissident conservative Democrats who had helped give him his first budget victory. These advisors told the president that although Stockman's complete budget substitute would fail, a more modest partial package could pass the House.

Among the additional changes the House Republicans wanted were tighter controls on food stamp and school lunch spending, further tightening of welfare programs, phasing out of Social Security student benefits, further cuts in subsidized housing, limiting guaranteed student loans to the needy and providing only annual cost-of-living benefit increases for military and civilian government retirees (instead of biannual increases).

Combat began the next morning when the president called Speaker O'Neill. According to Smith, the president told O'Neill that the House bill didn't go far enough and that he was going to submit an alternative. O'Neill then interrupted the president, reminding him that the committees had completed their work and that it wasn't the place of the president to write legislation.

"Can you be specific about what you're going to send up (to Capitol Hill)?" the speaker pressed on. "You always talk to me in vague generalities. I don't want to see the Republicans trying to shove something through without full consideration."

"Oh, c'mon, you mean the Democrats," tweaked the president. "I was a Democrat myself, longer than I've been a Republican, and the Democrats have been known to make a few power plays."

The speaker backed off, promising the president that the leadership would consider his proposal and promising to get back to him.

"The president's dander was up," Smith wrote. "He became further irritated, aides later said, when O'Neill did not 'get back to him,' though that may have been a misunderstanding. At any rate, the die had been cast, and any thought of compromise on either budget or tax cuts had been dashed. Reagan was eager for confrontation and ready to work hard to beat the Democrats."

Six days later the budget battle had turned into an intricate parliamentary fight over whether to consider Gramm-Latta II (the presidentially-backed Republican substitute) in six separate sections. The Democrats reasoned that if the budget cuts could be broken down into real issues, members might be more reluctant to vote against specific items important at home.

Meanwhile, the president was in Los Angeles stumping for his economic program at the National Jaycee convention. That night Stockman and Friedersdorf telephoned Reagan to report a new insurrection among conservative Democrats. The White House had already been having trouble with twenty or so moderate Republicans from northern and midwestern states who were calling themselves "gypsy moths" to counterbalance the boll weevils. To get the support of the "gypsy moths," the administration softened several proposed budget cuts, offering to add $350 million for Medi-

O'NEILL, WRIGHT, AND OTHER LEADING DEMOCRATS LEAVE THE WHITE HOUSE AFTER HAVING CONVINCED THE PRESIDENT THEY MEAN BUSINESS ON THE TAX CUTS.

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caid, $400 million in home-heating subsidies for the poor and elderly, $260 million in mass-transit operating funds and more money for Amtrak and Conrail, the government subsidized passenger and freight railroads.

White House Deputy Chief of Staff Michael Deaver was reluctant to ask the president to do more politicking that night, but when the president was told how close the vote could be he seemed willing.

"It may be as many as 20 calls," Deaver said, testing him.

"Well," the president said, "we'd better get going."

The White House switchboard tracked down the 16 most important members at dinner parties, in restaurants or at home. For two and a half hours, the president stalked votes.

The president would begin each call: "Gee, I know it's late back there and I'm sorry to bother you. I hear you're still on the fence. If I could answer any questions, I'd be happy to. I know you've been under a lot of pressure. But I hope you can find your way clear to supporting us tomorrow." Specific problems or questions were referred to Reagan's staff.

Louisiana Democrat John Breaux was found at a dinner party. "The president comes across on the phone as smoothly as he does on TV," Breaux recalled. "He's a generalist, doesn't talk details. But he knows enough of the big picture. It's a soft sell and it's very effective."

"I went with the best deal," said Breaux, one of 29 Democrats who had joined the Republicans. Somebody wondered if that meant Breaux's vote could be "sold." "No," Breaux responded. "It can be rented."

Breaux's deal was an administration commitment to accept potentially costly price supports on sugar.

On the day of the vote the president was still making calls. The *New York Times* said: "The Democratic leaders rushed the measure onto the floor this morning when Mr. Reagan was in California to preclude the president from lobbying during the forthcoming 10-day July 4 recess. But Mr. Reagan undertook an intensive lobbying campaign last night and this morning, calling conservative Democrats in the House cloakroom during the budget debate, promising that he would support legislation in which they were interested." To give the president more time, dozens of Republicans stalled by making one-minute speeches at the opening of the session.

The calls and deal making had done the trick. In a 217 to 210 victory, the Republicans won the key procedural vote that prevented the Democrats from cutting up Gramm-Latta into six parts. As a result, the final vote on reconciliation became a simple up-or-down vote to support the president.

The constant pressure that flowed from Reagan's popular support was one tool the Republicans used to gain victory. Making deals with key members was another. The Republicans also had the imposing threat that campaign contributions would go to a congressman's opponent if he failed to back the president.

Hedrick Smith reported that a House Republican task force under Representative Stan Parris of Virginia crosschecked computer lists of people who had contributed more than $100 to both the Reagan presidential campaign and to Democratic congressmen's campaigns. Computerized letters went out asking these pro-Reagan contributors to pressure their representatives to vote with the president.

"The key to these congressional victories is muscle," said Senator Paul Laxalt (R-Nev.), a close friend of Reagan's. "If a key contributor calls and says, 'Go along with this,' it has an effect."

Representative Daniel Mica, a Democrat from the Palm Beach, Florida, area, was pressured by his former campaign manager. "I had a call, too, from a local mayor, a Democrat very active in the party and associated with liberal causes, and he asked me to vote with the president," Mica said. "It surprised me that they would get to him."

All of these methods were used for the final assault to pass the tax cut bill. Once again two bills were under consideration, the Democrats' and the president's. The president had modified his proposal slightly to reduce the personal income tax rate 5 percent in 1981, 10 percent in 1982 and 10 percent in 1983. The president's bill also indexed the tax rate to inflation. That way a taxpayer could not "creep" into a higher tax bracket because his salary had been increased by inflation.

The Democratic bill excluded the third year of the tax cut to ensure that there would still be revenue to help balance the budget. It designed the cuts to benefit low- and middle-income Americans. "Anyone who represents a district with an average family income of more than $50,000 should vote for the Reagan tax bill," said Speaker O'Neill.

In the weeks before the tax bill was considered by the House, key House members were invited to Camp David or the White House for some gentle sales talk.

Three days before the vote, the president met with a small group of congressmen, casually inviting their

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Speaking on television on July 27, 1981, President Reagan uses a chart to demonstrate how the Democratic tax proposal would only help middle-income families for two years, while his tax cut would have more permanent benefits.

questions or comments. Hedrick Smith described the mood:

> It was the classic Reagan charm treatment—no hard sell, no demand for commitments, but a willingness to listen and talk, and a flattering sense of access and importance. Later on, aides would follow up, offering the Oklahomans a presidential pledge to fight any windfall-profits tax on natural gas, telling the Georgians the president would oppose large peanut imports in the future. President Reagan's job was softening them up. As they drove away, he said to one aide: "Gee, I wonder if we did any good with those fellows today."

The instrument that would eventually win the tax cut victory for Reagan was another televised speech on prime time the evening before the tax cut vote. *Newsweek* called his speech "magical."

Rather than spending a lot of time going over the details of his tax cut, the president simplified the issue to partisan politics, quoting the advice of a constituent to a southern Democratic congressman: "Don't give me an essay. What I want to know is, are you for 'em or agin 'em?" The president derided the Democratic bill, agreeing dryly that the bill did provide more for working families earning less than $50,000—"if you're only planning to live two more years." Over and over again he urged his listeners to drown the Hill in phone calls and telegrams. "We have done so much and have come so far," he said. "Let us not stop now."

The effect was devastating. Washington's Western Union office was flooded with telegrams at ten times the normal rate, running 12 to 1 in the president's favor, according to the White House. The White House logged 2,479 favorable calls overnight, tripling the all time high for Reagan. Congress received 39,000 in a day.

Dave McCurdy, a Democratic freshman from Oklahoma, said that the "overwhelming support" the president commanded in his district was the key factor in winning his vote. A colleague pointed out that McCurdy received 400 calls and letters in 24 hours supporting the bill, including many from his leading campaign supporters.

"The White House found every major contributor McCurdy had, and had them call him," the colleague said.

Representative Bill Hefner (D-N.C.) said that major corporations in his district had generated considerable pressure. "They called and said, 'You're targeted; we want you to know this is the biggie for us,'" said Hefner, who backed the Democratic bill. "I've had all manner of threats against me," he added. "The corporations were setting up phone banks, not only in my district but elsewhere."

Representative Ralph Hall of Texas had committed himself to the Democrats' bill, but Reagan invited the lawmaker to the White House the day before the vote and then called a radio talk show in Hall's district to generate additional pressure. On the afternoon of the vote, Hall was "begging" Democratic party leaders to release him from his com-

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mitment, according to one of those leaders. Hall voted with the president.

"It's always the same," said Representative David R. Obey (D-Wis.). "This is a very young place, with no institutional memory. People get 200 letters and they think it's an avalanche. So many young people don't know how to take the pressure. They sweat early and they cave early."

The vote was 238-195; 48 Democrats had defected to the president's side. After the vote, members were shaking their heads in awe of the president's lobbying ability.

Representative Claude Pepper, (D-Fla.), said he could recall nothing like the tax lobbying during his 33 years of Senate and House service. "They've been giving us the works," he said.

Epilogue

In the year after the president's tax cut and budget victories, the economy took a turn for the worse and so did the cohesiveness of the president's "bipartisan" coalition.

Although the inflation rate was much lower and interest rates began a slow decline in 1982, investment and business profits failed to respond to the first two installments of the three-year 25 percent tax cut. Meanwhile, unemployment rose to 10.1 percent in September 1982, the highest rate since World War II, and the final FY '82 budget deficit was approximately $110 billion.

To prevent future deficits from rising even higher, President Reagan urged Congress to pass a new $98.3 billion tax increase and a $17.5 billion spending reduction package for the next three years. The victory, which the president gained on August 19, 1982, came at the price of party unity. Only 103 House Republicans voted for the president's bill; 87 voted against it. Conservative Republicans, led by supply-sider Representative Jack Kemp, argued that the middle of a recession was not the time to repudiate the 1980 election mandate to cut taxes and spending. The president, instead, found unlikely new allies to pass this tax bill, including Massachusetts Senator Edward Kennedy and Speaker Thomas O'Neill.

On August 28, 1982, the president vetoed a $14.2 billion supplemental appropriations bill needed to keep the government operating through the remaining month of the 1982 fiscal year. Calling the bill a "budget-buster," Reagan complained that the bill cut his request for defense spending while providing more than $900 million too much for social programs.

After the veto, members of Congress argued that the bill actually provided $1.9 billion less than the $16.1 billion the president had requested in FY 82 supplemental appropriations. The House overrode the president's veto with 22 votes more than the two-thirds majority required, and the Republican-controlled Senate had no votes to spare, voting 60 to 30 to override the veto.

"I'm not angry," the president said after the Senate overrode his veto, "I'm just terribly, terribly hurt."

Whether or not the president's economic coalition is finished for good is unclear. But the president suffered a second economic-policy defeat on October 1, when the House rejected a Reagan-backed proposal for a constitutional amendment requiring Congress to adopt a balanced federal budget each year. Twenty Republicans joined 167 Democrats in rejecting the proposal.

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2. The Federal Bureaucracy

"I have found that the brown bears are under the jurisdiction of the secretary of agriculture, the grizzly bears under the care of the secretary of the interior, and the polar bears under my protection as secretary of commerce."

—Herbert Hoover

"When General Eisenhower becomes president, he'll sit here and he'll say 'Do this! Do that!' and nothing will happen. Poor Ike—it won't be a bit like the Army."

—Harry S Truman

Nowhere in the Constitution can one find mention of a Cabinet, regulatory agency, government corporation, or advisory commission—the components of bureaucracy. But, as the role of government has grown and changed over the years, implementing the laws of the land—the job of the executive branch—has grown increasingly complex. With each program that the federal government has instituted, additional people have been required to administer and enforce new laws. The bureaucracy is now the largest component of the federal government—it includes thirteen executive departments and nearly two hundred independent agencies that employ almost three million individuals.

Although the bureaucracy is part of the executive branch, and therefore headed by the president, in many ways it functions independently. Most employees of the bureaucracy are career civil servants who retain their jobs during a change of administration. This has often made control of the bureaucracy difficult for presidents. Harry Truman's quote above illustrates the frustration Democratic and Republican presidents have shared in effecting change within the bureaucracy. Congress has encountered similar frustration, and many legislators have called for laws that would tighten congressional oversight of the bureaucracy.

The bureaucracy is often criticized, but it performs a vital function in American government. The services we expect of the federal government require a bureaucracy. But has it grown too large and inefficient? Could it be reduced without affecting the services it provides? Do we need all of the services that it provides? On the other hand, are there services that it should, but does not now, provide?

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Regulatory agencies usually conduct business quietly. But when trouble erupted at the controversial EPA, the nation got a rare glimpse of the inner workings of a portion of the federal bureaucracy.

Words to Know

bureaucracy
Cabinet
civil service
government corporation
independent agency
merit system
political appointee
red tape
regulatory commission
spoils system
sunset laws
zero-based budgeting

The Federal Bureaucracy: It's Better Than You Think

J. Douglas Hoff

Mr. Hoff is the director of the international visitors office of the Office of Personnel Management (OPM). In this article Mr. Hoff discusses the role of bureaucrats and the merit system in the functioning of government. Compare his defense of the federal bureaucracy with the critique of "big government" by Senator Barry Goldwater in the next article.

The American brand of bureaucracy consists of more than 17 million people working for the government at the federal, state and local levels. This adds up to 20 percent of the nation's total work force, or one out of five working Americans. With 2,865,000 civilian employees, you can see that the federal government is the largest single employer in the United States. In fact, it employs more people than do the eight largest industrial corporations put together. On the federal level, more than 90 percent of the employees are in the executive branch. Many of the critics of "big government" have claimed that this is far too many people, doing far too many things, much too inefficiently and at too great a cost. Before we accept such an analysis, we need to ask who these bureaucrats are and what they do.

Who Are These Bureaucrats?

The well-known secretary of the interior in the Roosevelt Administration (Harold Ickes) was asked by a magazine editor to write about "the bureaucrat." Ickes did so. He defined him and proudly defended him. "That there is a bureaucratic system in government—no one can deny," he wrote. "We would have political chaos on our hands were it otherwise. It is the "bureaucrat," the steady, competent, if sometimes too deliberate career-person who makes the government watch tick. A bureaucrat in a department, like a clerk in a drug store, knows on what shelf he can find the particular drug called for in the prescription. Unfortunately, many people do not think of bureaucracy except in terms of government service. This is superficial thinking of the thinnest kind. Every big business is a bureaucracy. It could not be a big business if it were not, or being one it would soon fall apart, leaving nothing but unintegrated pieces to be swept up by the janitor and thrown into the ashcan.

Civilian employees working in the Department of Defense in support of military troops stationed in Western Europe are bureaucrats. So are your mail carriers, and the scientist who tests dangerous drugs for the Food and Drug Administration, and the clerk who writes benefit checks for war veterans, and the ranger at your favorite national park. As Jack Anderson once wrote, "The bureaucracy is the glue that holds our society together." All in all, there are 110 different departments and agencies in the federal government whose members perform at least 2,000 different kinds of work throughout the world. The Postal Service alone accounts for almost 660,000 employees; the Veterans Administration for more than 233,000; and the Departments of Health and Human Services, Treasury and Agriculture for 157,000, 138,000 and 121,000 respectively. This is the federal bureaucracy.*

What Is Their Work?

To realize how important the bureaucracy is, you must understand the divisions of authority in the federal government. As you know, the president and the Congress share the authority for determining policy and steering the general course of the nation. The presi-

***Editor's Note:** For a better understanding of the size and structure of the bureaucracy, refer to the table below, *Total Federal Civilian Employment,* and the diagram *Structure of the Executive Branch,* page 29.

Total Federal Civilian Employment

	Executive	Legislative	Judicial	Total
1980	3,065,672	41,357	14,740	3,121,769
1970	2,884,307	30,715	6,887	2,921,909
1955	2,376,000	22,000	4,000	2,402,000

Source: U.S. Bureau of the Census, *Statistical Abstract for the United States*

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Largest Employers in the Federal Government (1980)

	Number of Civilian Employees	Percent of Total Federal Employment
Department of Defense	987,890	31.6
Postal Service	666,228	21.3
Veterans Administration	239,625	7.7
Department of Health and Human Services	163,921	5.3

dent formulates and recommends programs to the senators and members of Congress, who, as representatives of the people, appraise these ideas. In making his policy recommendations, the president is advised by his Cabinet secretaries, the heads of major agencies and the highest ranking members of the career bureaucracy.

Once a bill has been passed by Congress and signed into law by the president, it must be implemented and administered. The actual administration and implementation are frequently more difficult tasks than is the passing of laws. It is the career employee—the senior-, middle-, and lower-level bureaucrat—who carries out those policies under the supervision of the Cabinet secretaries and agency heads. The fate of these policies depends on how they are received by federal managers and supervisors.

Political Appointees and Career Employees

Cabinet secretaries, commissioners of regulatory agencies, administrators of independent agencies and other high-level aides are appointed by the president subject to confirmation by the Senate. For effective government it is essential that a president have the power to appoint people in whom he has great trust and confidence. Their appointment by the president assures proper organizational responsiveness. About 1,000 positions are filled by presidential appointment subject to Senate confirmation, and a few hundred others are appointed directly by the president. These *political appointees* come and go with the change of presidents.

In addition to this small but important group of political appointees, there is a much larger core (more than 2.5 million) of well-trained career government employees. These are the people who actually carry out essential government programs day after day, year after year. The career federal employee serves the system of government and not a political party. He or she provides continuity in government service. Regardless of who wins or loses an election, the people's business is continuously served with complete dedication by the majority of career employees. They may also be delegated some policymaking authority, but generally the role of the civil servant is to provide the devotion and specialized knowledge needed to carry out government services.

The Federal Merit System and Civil Service Reform

Under the administration of our first presidents, ability was one of the primary requirements for appointment. Gradually, however, other factors became more important, until government employment became a "spoils system."* In a spoils system political connections, rather than job qualification, are the important factors in the selection process.

The excesses, corruption and inefficiencies of this spoils system caused a great popular reaction in the 1870's and 1880's. Demands for reform were answered by the Civil Service Act of 1883, which established the merit system for federal employment under the United States Civil Service Commission.

Today, 96 years later, another great popular reaction against a bureaucracy that is thought to be too big, too inefficient and too costly to respond effectively to the needs of the American government and people has brought about another major overhaul. The Civil Service Reform Act of 1978 abolished the Civil Service Commission, established a new Office of Personnel Management (OPM) and created a personnel system, which, when fully implemented, is designed to make government more flexible, economical, efficient and responsive to the needs of the people.

OPM is the central personnel agency for the executive branch of our government. It is the personnel management arm of the president, and in that capacity it sets the overall personnel policy for the executive branch, provides the necessary leadership in the field of personnel management and administers the merit

* **Editor's Note:** The term *spoils* has its origin in the expression "to the victor go the spoils."

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system of federal employment. Making policy and providing leadership is the job of the president. However, he is too busy to hire most of the people he needs to help him do the job, and therefore he has directed OPM to oversee personnel management.

The central principles of the merit system are:

1. Ability, knowledge and skills are the basis for recruitment, selection and advancement of government employees.

2. All applicants and employees will receive fair treatment and equal opportunity without regard to race, sex, creed, national origin or political affiliation.

3. Employees will receive equitable and adequate salaries.

4. Employees must be protected from coercion for partisan political purposes.

5. Employees must be prevented from using their official authority to interfere with or affect elections or nominations for office.

For the nation, the merit system ensures many benefits. It increases public confidence in the integrity of government. It guarantees equal opportunity for all interested citizens. It ensures a continuity in the bureaucracy through changes in the presidency. It also makes government service more attractive to well-qualified persons. Merit principles in public employment provide a blueprint for sound personnel management and a basis for honest and effective government.

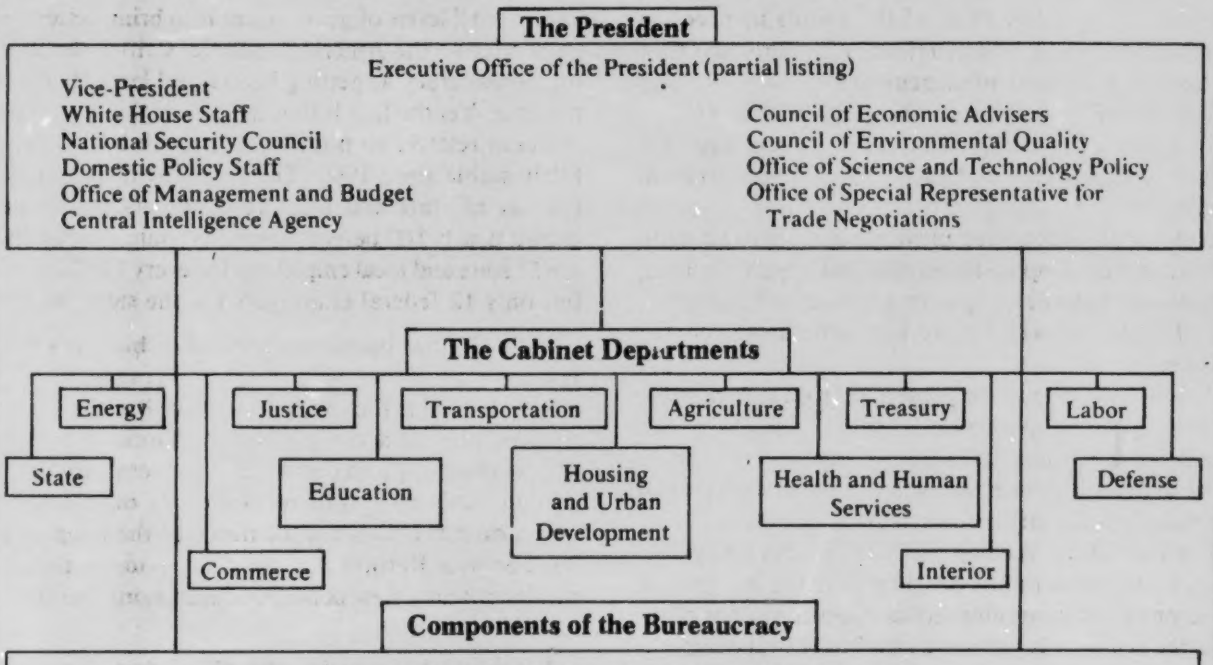
Providing Services for the American People

The agenda of government consists of many problems. It is to these problems that the attention of government must be directed at all times. The overall objective at all levels of government is to bring better quality service to the American people. Critics stereotype the bureaucracy as getting bigger and less efficient all the time. Yet the fact is that the size of the federal government relative to population growth has remained fairly stable since 1960. The real growth has been in the size of state and local governments, which have grown nearly 100 percent since that date. Today there are 57 state and local employees for every 1,000 citizens, but only 12 federal employees for the same number.

Is the federal bureaucracy good or bad? It's both! It is a mirror of the society it serves. As such, it reflects all the ills that afflict our nation as well as the tremendous number of accomplishments. Good or bad, it is always changing and developing. Government cannot remain static in its philosophy or its organizational structure if it is to serve the needs of the people. The Civil Service Reform Act clearly provides a different emphasis and a new concept of managing the federal bureaucracy.

Whatever its faults may be, this federal bureaucracy—established 200 years ago for 13 small colonies with three million inhabitants—is still functioning well today for one of the mightiest nations the world has ever known, with 226 million people and a host of problems unknown to the founding fathers. You can search the world over, and you will never find a government bureaucracy bigger, more complex or as good.

Structure of the Executive Branch



Components of the Bureaucracy

Independent Agencies, Regulatory Commissions and other Offices (partial listing)

Action
Administrative Conference of the United States
Advisory Commission on Intergovernmental Relations
American Battle Monument Commission
Appalachian Regional Commission
Civil Aeronautics Board
Commission on Civil Rights
Commission of Fine Arts
Commodity Futures Trading Commission
Community Service Administration
Consumer Product Safety Commission
District of Columbia Government
Environmental Protection Agency
Equal Employment Opportunity Commission
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Reserve System
Federal Trade Commission
Foreign Claims Settlement Commission
General Services Administration
Indian Claims Commission
Inter-American Foundation
Interstate Commerce Commission
National Aeronautics and Space Administration
National Credit Union Administration
National Foundation on Arts and the Humanities
National Labor Relations Board
National Mediation Board
National Railroad Passenger Corporation (Amtrak)
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Personnel Management
Overseas Private Investment Management
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
Tennessee Valley Authority
U.S. Arms Control and Disarmament Agency
U.S. International Trade Commission
U.S. Postal Service
Veterans Administration

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Government Regulation Saves Lives and Dollars

Mark Green

Mr. Green is the founder and president of The Democracy Project, a public policy institute. He is the author of Who Runs Congress? *and numerous other books on government and business. In this article, he defends the role of government regulation in protecting the public interest. Compare his views with those presented in the next article.*

There is an ongoing propaganda campaign by big business interests to attack federal consumer and environmental regulation. Mobil Oil calls it a "national orgy of regulation." *The Wall Street Journal* attributes the decline of American industry to "berserk proceduralism." And corporations everywhere denounce "big government."

To be sure, any government that regulates prices and is so involved in the nation's economy that it decides the height from the floor for fire extinguishers needs critics who can distinguish between rules that save lives and those that save face. Unfortunately, today's debate over health and safety regulation lacks this sense of discrimination. Instead, it burns incense to supposedly neutral "cost-benefit analysis" and neglects the actual benefit of consumer and environmental regulation.

Given the current state of economic art, mathematical cost-benefit analyses are about as neutral as voter literacy tests in the Old South. They are often ideological documents designed to prove preconceived notions. Or, as a Library of Congress review has said of them, "They tend to support the vested interest of the sponsor of the estimate or to fit the hypothesis of the individual making the estimate."

The Value of Regulation

We seem to have suffered a kind of collective amnesia about exactly why we have regulatory agencies. Let's examine some cases of the past few years.

Consider environmental legislation. Who controls information about its costs? The regulated industry, of course. The Securities and Exchange Commission (SEC) has a curious case pending against U.S. Steel: the company allegedly has established two estimates for the cost of meeting certain pollution standards—a higher estimate issued publicly and a lower one sent to the SEC.

"Unfortunately today's debate over health and safety regulation...neglects the actual benefits of consumer and environmental regulation."

A few years ago the Cuyahoga River in Ohio caught fire. One thousand Americans each day die of cancer, much of it environmentally caused. Auto crashes took 47,000 lives and caused more than 3 million injuries in 1977. One out of every eleven workers in the private economy had job-related injuries or illnesses in 1976. Women around the Love Canal in upstate New York, one of 638 known sites of hazardous wastes, have experienced unusually high miscarriage and birth defect rates. A nuclear power plant in Harrisburg, Pennsylvania, did what the nuclear industry had claimed was next to impossible—it came close to a meltdown because of mechanical and human failure.

So, although the debate over regulation has focused on how the federal government dictates the shape of toilet seats, there are clearly more fundamental issues at stake.

While the competitive marketplace can be an engine of efficiency, it was not designed to tell consumers which car might have a steering defect, which drug has serious side effects, what product unduly pollutes. My car pollutes your bedroom. The plane I travel in envelops you in jet noise. I am a voluntary consumer; without federal standards, in these instances, you would be an involuntary consumer.

Federal regulation can be viewed as a contract between consumers and business—with the government as mediator—in which consumers agree to a market economy if business avoids unnecessary injury and death. It establishes minimum conditions for humane capitalism.

In many cases, consumer and environmental regulation has stimulated innovation in often rigid, unimaginative industries.

Before the Food and Drug Administration banned spray cans using fluorocarbons, the industry said there was no alternative. The day after the ban went into effect, the country had a new pump spray that didn't use fluorocarbons, and that was *cheaper* than aerosol cans. After Washington imposed strict safety standards for car bumpers, auto engineers developed bumpers

that are far stronger and lighter—and that save consumers an average $100 in repair costs over the life of the car.

A 1975 study by MIT's Center for Policy Alternatives of five industries in five countries found that, in the area of health and safety regulations, "forcing firms to implement product or process changes oftentimes incidentally shocks them out of a rather inflexible production system and thereby provides the catalyst which is necessary for innovation to occur."

Regulation has also produced jobs. Although the Environmental Protection Agency estimates that 20,000 jobs have been lost in plants that could not meet environmental standards, the number of direct jobs created by pollution control expenditures is 600,000.

Due to product safety standards, there has been a 40 percent drop in infant deaths from crib strangulation and swallowed poisons. Approximately 200,000 Americans alive today would be dead if Washington hadn't been regulating car and highway safety since the late 1960's. By 1985, federal fuel economy standards for cars will be saving 15 billion gallons of gasoline annually, or $640 over the life of the vehicle.

This is to say nothing about the benefits of regulation that involve immeasurable or moral considerations. What is the price tag for lives saved by avoiding future diseases, since asbestos and other substances in our lives today cause cancer in 30 years? How much does one pay for a 6-year-old not to be disfigured from flammable sleepwear? How do we calculate the exact benefits of being able to see across the Grand Canyon, of avoiding the needless destruction of recreational areas? What is the value of a life saved?

Cost-Benefit Studies

Cost-benefit studies do not and cannot measure these kinds of benefits. To believe that business-dominated cost-benefit studies should control government decisions is about as wise as arguing that one party to a lawsuit should also be the judge.

An analysis by Chase Econometrics, for example, asserts that environmental regulation will account for an average 0.3 to 0.4 points of the annual increase in consumer prices in the 1970-1983 period. Unfortunately, the study is based on *gross* cost, not *net* cost. As Senator Gary Hart, (D-Colo.), complained of the Chase study, "It is irresponsible to discuss costs of pollution control without comparing them to benefits." Even taking Chase's numbers at face value, a significant 20 percent reduction in regulatory costs would only lower the annual rate of increase in the cost of living by one-tenth of a percentage point. Any reduction in inflation is not to be disparaged, but the contribution of regulation to the problem is relatively modest—probably less than the contribution of price fixing, trade barriers, natural gas deregulation, the depreciation of the dollar, the latest OPEC price increase or oil decontrol.

"To believe that business-dominated cost-benefit studies should control government decisions is about as wise as arguing that one party to a lawsuit should also be the judge."

For these and other reasons, the General Accounting Office, the Council on Environmental Quality, the Congressional Research Service, the Senate Governmental Affairs Committee, and the House Oversight and Investigations Subcommittee have all criticized the value of mathematical cost-benefit tests.

In the words of the House subcommittee, "The limitations of the usefulness of cost-benefit analysis in the context of health, safety and environmental regulatory decisions are so severe that they militate against its use altogether." In a recent report, the Senate subcommittee concluded that "while agencies should be required to project and consider costs, benefits and alternatives, that analysis must not be considered a final determinant of whether an action should be taken. The difficulty of quantifying costs and benefits and the appropriateness of applying economic statistical analysis to health and safety areas must be recognized."

Reform, Don't Abolish

Obviously, before implementing any proposed legislation, officials should attempt to estimate or at least specify the desired benefits, to minimize the costs of compliance and to consider alternative routes to the same goal. This general "impact review" is the basis of a "regulatory reform" bill originally introduced by the past chairman and ranking Republican of the Senate Governmental Affairs Committee, Abraham Ribicoff, and Senator Charles Percy.

The Regulatory Reform Act of 1982 (S.1080 in the Senate, H.R.1746 in the House), which is now being considered by Congress, would require agencies to conduct and publish an "impact review" when introducing and implementing any rule; it would speed up agency decisionmaking by reforming the Administrative Procedure Act; it would increase public participation as agencies make regulatory decisions; it would strengthen the subpoena power of regulators to understand better the community they are regulating. This approach emphasizes that health and safety regulation should be improved, not abolished.

Excessive Regulations Hurt the Economy

H. Brewster Atwater, Jr.

Mr. Atwater is president of General Mills, Inc., one of America's largest corporations. In this article he presents a counterpoint to the views expressed by Mr. Green in the preceding article. His central argument is that the growth of government regulation has done serious damage to our economy.

Most businessmen today are deeply concerned about the extent and nature of government regulation. Unfortunately, that concern is often described by our critics as hostility to *any* government regulation. As most of you have learned already, issues and people cannot be so glibly characterized or stereotyped. It is a proper function of government to regulate in order to assure that legitimate societal objectives are achieved. It is also proper for government to regulate the conduct of groups and institutions that abuse their power and prerogatives in a way that injures society. The regulations I find objectionable are those that provide little benefit to society at a very great cost.

Well-Intentioned Efforts, Dubious Results

Let me give you an illustration of what I mean. Among other things, General Mills ships grain. In 1976 a series of indictments and convictions of a very few companies (General Mills was not involved) were linked to irregularities in grain handling, inspection and weighing activities in the Lower Mississippi River area. This resulted in the creation of the Federal Grain Inspection Service. Before its creation there had been 342 employees in grain inspection and weighing; as of December 1978, this number had grown to more than 1,520 full-time employees, and the number is expected to increase.

Because of the problems in the Lower Mississippi River, the FGIS has interpreted the law requiring the weighing of all grain received at or shipped from export elevators as meaning the weighing of grain with full FGIS supervision. In Duluth, Minnesota, the cost of weighing a truck of grain under full government supervision is *more than four times as expensive* as the cost in Minneapolis of weighing a truck of grain under supervision by the Grain Exchange. Yet I know of no problem that has ever arisen under the latter system that has not been swiftly and effectively dealt with. General Mills frequently ships grain from its elevator in Duluth to its own packaged food plant in Buffalo, New York. Under the new FGIS regulations, we are placed in the ludicrous position of paying much higher weighing costs to have the federal government make sure we do not cheat ourselves when shipping grain to Buffalo!

I mention this example because it applies directly to us, but there are other equally disturbing situations one might cite. How many of you recall the commendable efforts of the Consumer Product Safety Commission to assure that children's sleepwear would be, to the greatest extent possible, flame retardant? To this end, the agency issued regulations that it knew required manufacturers to use Tris in order to achieve the desired result. Millions of dollars later, however, the agency learned that this chemical was carcinogenic, and that sleepwear treated with it should be removed from the marketplace immediately.

About five years ago Congress enacted the Employees Retirement Income Safety Act (ERISA), which was designed to ensure the security of pensions. Unfortunately, one major result of this effort was to discourage many employers from creating pension plans and to drive many smaller existing plans out of business. Consequently, some people benefited from this act, but many others suffered a loss of pension security.

The point about all these examples is that they were well-intentioned efforts to correct perceived abuses that wound up imposing costs, both planned and unintended, and achieved dubious results at best. These and other examples like them beg the question: Can we continue to accept uncritically a regulatory system that produces such ill-conceived programs in light of their increasing costs to society?

The Cost of Regulation

What is the total cost of all this regulation? Here my businessman's preference for precise figures must yield to estimates, which I acknowledge are soft. Dr. Murray Weidenbaum (former economic advisor to President Reagan) estimated the administrative and compliance costs of regulations at $66 billion in 1976. In 1977, that figure rose to $102.7 billion, and in 1982, according to the Center for the Study of American Business, the cost rose to $130 billion. Even allowing for generous error, the sums of money at issue are enormous. Regulatory costs at the $100 billion level mean a levy equal to 20 percent of the federal budget is being invisibly imposed on society. And no one has a handle on it. If we can agree as a matter of common sense,

as well as sound economics, that this is not a healthy situation—what, then, should we do about it?

As difficult as it may be (and it *will* be difficult), some acceptable method of measuring the economic impact of regulations must be developed, and the whole regulatory process, administrative and legislative, must be brought under budget discipline. Regulators today enjoy a luxury that is not available to any other economic decision-maker: the ability to spend resources on one objective without reducing the spending on others. Costs will have to be weighed against intended benefits (which frequently reflect societal values rather than quantifiable economics), and the analysis will have to be made a prominent feature of regulatory decision-making. This is tricky business, because some of the benefits may involve avoided costs to society that are sometimes difficult to calculate.

Despite these difficulties, the words of Dr. Alfred Kahn, former chairman of the Council on Wage-Price Stability and President Carter's chief advisor on inflation, are instructive:

> I think we would all agree, as a general purpose, that the goals of environment, health and occupational safety legislation are unexceptionable. But any objective observer would also have to agree that there are extremely large costs here that, in many cases, have not been subjected to the kind of scrutiny for cost-effectiveness that rationally ought to be applied—billions and billions and billions of dollars of such costs.... We must recognize that when we impose costs for this purpose, we are making less food available, less medical care. In short, our resources are limited.

As many of you may know, in recent years the United States has had a very poor rate of growth in productivity. Apart from cutting costs, the only other major tool available for increasing productivity is innovation. Innovation requires a stimulating, supportive atmosphere and the investment of dollars in new systems and research. With those regulatory cost figures fresh in your mind, you may find it interesting to know that the total amount of money spent on research and development in the United States in 1977, including defense and other government research and development, was $42.7 billion. Total capital investment in plants and equipment in 1977 was $135.8 billion. Even more discouraging than the ratio of regulatory costs to the costs of research and development and capital investment is the finding of the National Science Foundation that the amount of research and development spending (within the disappointingly low total) devoted to meeting the requirements of legislation has risen by

"The problem facing business and government is how to achieve what society wants from us in the most rational, effective way."

19.3 percent compounded annually, from 1974 to 1977.

Finally, I would like to comment on another aspect of regulation that I consider a disturbing trend, and that is the tendency of regulatory agencies to chart broad rules instead of adhering to the more traditional role of executing and adjudicating established policies. My own view is that policy formation is what we elect representatives, senators and the president to grapple with. The concept of appointive regulators acting as a mini-legislature is seriously flawed. Public policy affecting broad interests must be debated and developed in a forum and by persons who are accountable to the body politic. It would appear that Congress has begun to seriously rethink its own attitude toward this phenomenon, as exemplified in the current efforts to attach legislative veto provisions to a variety of bills.

As this article suggests, I am in favor of cost-benefit analysis of all legislative and regulatory proposals. I am also in favor of Congress' reasserting its fundamental right and responsibility to establish public policy. Beyond that, it is my impression that current conflict of interest rules prevent the best qualified people from serving in regulatory agencies, and I think that, in general, regulators would do better to focus on the outcomes they wish to achieve rather than to regulate the conduct of a business in the hope that this may achieve the desired result.

I should also acknowledge that we in business must do a better job. I was struck by the findings of a recent public opinion poll in which 53 percent of the people surveyed felt business was failing in its responsibility to keep the environment clean; 47 percent felt business failed to live up to product warranties and guarantees; 40 percent felt business failed to produce dependable products or services; and 30 percent felt business failed in its responsibility to provide a safe working environment. So we have no reason to feel smug and a lot to be humble about. Nevertheless, in that same poll, 52 percent of those surveyed agreed that the costs of government regulation outweigh the benefits of such regulation. The problem facing business and government is how to achieve what society wants from them in the most rational, effective way.

Making American Foreign Policy

Les Janka

In this article, Les Janka draws on his years of experience in government to give an overview of how foreign policy decisions are made. Mr. Janka served both Presidents Ford and Carter as deputy assistant secretary of defense and President Reagan as deputy press secretary for foreign affairs.

Too many people think foreign policy is a strange and mysterious subject, too complicated to be understood except by "the experts." This is not true. In simplest terms, foreign policy is the way in which our federal government acts to protect us from foreign threats, to advance our economic interests, and to encourage the growth of the American ideals of freedom, economic prosperity and human rights around the world. It encompasses more than just the decisions made during wars or major crises; it also includes the countless day-to-day actions taken to build the peaceful world environment in which our national interests can be fulfilled.

Because we live in a world of more than 150 independent sovereign nations without an effective world government to regulate competition, making foreign policy is a complex and never-ending task. Many parts of our federal government, in both the executive and legislative branches, cooperate and also compete in the formulation and execution of foreign policy. The special interest groups, the media, and private citizens all have an opportunity to influence the outcome of this process.

Role of the President

Because the United States was not a world power in the 1780s, the Constitution does not contain very much about the powers of foreign policymaking. The president, having the powers of the commander-in-chief of the military and of appointing ambassadors as well as being the chief public official elected by all the American people, is the chief of state who speaks for the entire country and acts as the principal decisionmaker in foreign affairs. As the United States became a superpower in the 20th century, the president of the United States began to wield great powers of peace and war.

The president exercises these powers through his ability to appoint his own team of key officials such as the secretaries of state and defense, the heads of the military services, the director of the Central Intelligence Agency, and all ambassadors. Moreover, it is the president who proposes the annual budget for defense, diplomacy, and foreign aid and directs the negotiations that produce international treaties. For these reasons, it is generally only in presidential election campaigns that the major directions of U.S. foreign policy are debated by the American people.

Role of the State Department

The Department of State plays a predominant role in foreign policy and is probably the foreign policy-making agency most familiar to you. Headed by the secretary of state, it is responsible for conducting our relations with the rest of the world. In Washington, it employs the specialists who analyze international events, plan our government's responses, and carry on communications in day-to-day relations with other nations and international organizations. The Arms Control and Disarmament Agency and the Agency for International Development are part of this department. The Foreign Service, a division of the State Department, consists of those highly trained individuals who work in American embassies in 150 foreign countries. Ambassadors are selected by the president, subject to Senate confirmation, and once in office they report to the secretary of state. It is also the responsibility of the State Department to explain international relations to the American people.

Role of Other Departments

While the State Department has a central role in the executive branch, other departments and agencies are also involved in foreign policy. The Defense Department maintains our worldwide military forces and facilities to secure world peace. Military cooperation with our NATO allies and arrangements to protect trade routes and other U.S. interests around the world give the Pentagon a major role in making foreign policy. The Commerce and Treasury Departments conduct trade relations to guarantee markets for American exports and a steady supply of imports. The Agriculture Department sells and gives American crops to hungry nations. The Peace Corps sends volunteers to improve living conditions within the developing countries. The Central Intelligence Agency (CIA) collects information essential to effective decision-making in Washington. Many other parts of the executive branch also play a

part in foreign policy. Because these various departments and agencies often do not agree on policy priorities and sometimes compete for both money and influence within the executive branch, the president often has to referee and settle disputes among the members of his foreign policy team.

Role of the National Security Council

To manage all of these actors and to help the president set priorities and coordinate U.S. activities abroad, the National Security Council (NSC) was established in 1947. The NSC is made up of the president, the vice president, the secretary of state and the secretary of defense. The director of the CIA and the chairman of the Joint Chiefs of Staff are permanent advisors to the council, and the secretary of the treasury and the assistant to the president for national security affairs also regularly attend NSC meetings. This latter person is also the director of the 100-person NSC staff that supports the work of the council. On this very specialized part of the White House staff serve some of the country's best experts on international politics, economics and military affairs. The NSC system is the primary mechanism for assisting the president in making decisions and overseeing the implementation of his foreign policies. As you can see, the members of the NSC are the president's top advisors, who also have responsibility for carrying the president's decisions back to their departments.

Whenever the president wants to review or redirect existing policy, or when new problems require a new American response, the NSC system will undertake a major study to develop alternatives and make recommendations to the president. The actual study will be done by a "working group" made up of experts from the State Department, the Pentagon, the CIA and other relevant executive branch agencies. Generally the State Department's representative is the chairman of the working group.

When the study is completed (sometimes large or difficult studies will take a full year and hundreds of pages), it is then reviewed by the members of the NSC's Policy Review Committee (PRC). After the PRC has refined the policy recommendations, the NSC staff will prepare a decision paper for the president, spelling out the pros and cons and costs of each alternative. Before he makes a final decision, the president may consult further with the full National Security Council and other key advisors, members of Congress, academic experts and sometimes the leaders of our allies. While all of these individuals act as advisors and can make recommendations, the decision is ultimately made by the president. When the president makes his decision, a Presidential Decision Memorandum is written by the NSC staff, which then serves as a guide to all agencies involved in carrying out the new policy.

In addition to the work of setting broad national policies, the president's NSC decision-making system must first deal with hundreds of lesser policy problems. In these matters it is vital that the efforts of all departments and agencies be coordinated. To accomplish this, the assistant to the president for national security affairs frequently holds a working luncheon with the secretary of state and the secretary of defense to discuss current issues that do not require presidential attention. Sometimes the president himself has a working lunch with the vice president, secretary of state and his assistant for national security affairs to discuss important international developments and especially to consider the domestic political implications of foreign policy actions.

Role of Congress

The Constitution also gives important powers to the Congress regarding our international relations. Among these powers are the control of all appropriations (most importantly the funds for the defense and foreign aid budgets), the power to set tariffs regulating foreign trade, and the requirement that the Senate approve all treaties by a two-thirds majority before they can become law.

For most of our nation's history, Congress played only a minor and generally passive role in the design and conduct of our foreign policy. However, the bitter divisions of the Vietnam war led Congress to claim a more direct role in setting foreign policy, believing that this would give the American people a stronger voice on issues that vitally affect the lives of every citizen. Accordingly, in the past few years Congress has voted itself vastly increased powers to become involved in foreign policy issues. For example, Congress now has the power to review major weapons sales to foreign nations, to review and object to intelligence activities, and to disapprove of a presidential decision to send U.S. troops into foreign combat zones.

Because these congressional controls over executive branch actions raise questions about the constitutional separation of powers, they have frequently led to considerable conflict between the two branches. The basic question is not whether Congress should play a role in setting foreign policy, but rather how a body of 535 members can play an effective role in this process that requires constant attention, considerable expertise, the ability to maintain confidentiality, and the capability to act quickly and decisively.

When Congress and the president agree on a policy action, the extra degree of unity and support strengthens American diplomacy. But when Congress attempts

to impose its will on a certain issue or dictate the details of conducting delicate negotiations, the public debate and the impact of domestic political pressures can do harm to our international objectives. Similarly, many congressional restrictions on foreign aid and military assistance have sometimes prevented our government from acting quickly to help our friends when emergencies have arisen.

Role of Special Interest Groups and of the Public

Finally, the role of private groups and individual citizens should neither be overlooked nor underestimated in the making of foreign policy. As part of our normal democratic process, letters to representatives in Congress and to the White House, speeches by prominent citizens, resolutions of ethnic interest groups, published articles and books by experts, and direct statements by citizens to government officials in meetings like CLOSE UP seminars all represent important influences on the thinking of those making foreign policy. However, because too many Americans take too little interest in international issues, there is no large or natural constituency for foreign policy as there is on such domestic issues as the Equal Rights Amendment, gun control or tax reform. Therefore, various special interest groups have a larger voice in foreign policymaking because they have little or no competition. The opinion of the average citizen, if he or she even knows about or cares about these issues, is seldom heard in Washington.

So because Congress is unlikely to give up its new power and because private groups will continue to press their positions, it is all the more important for all American citizens to become informed and to let their voices be heard. It is your responsibility to let your representatives in Congress know your feelings about foreign policy issues so that Congress can have a better sense of what is in the broadest national interest. As in all things in our participatory form of government, the American people will get the kind of foreign policy they deserve depending on the degree and quality of their own involvement in the policymaking process.

The Executive Branch, the Cabinet and the Bureaucracy

Questions and Answers

I. DEFINITIONS

What is the executive branch?
The executive branch is one of the three branches of the federal government established by the U.S. Constitution. In addition to the president, vice president and the Executive Office of the President (described in Chapter 1), the executive branch consists of the 13 Cabinet departments and numerous independent agencies, regulatory commissions, government corporations and other agencies. See the diagram, *Structure of the Executive Branch,* on page 29.

What is the Cabinet?
The Cabinet consists of the 13 *secretaries*, who are appointed by the president (subject to Senate confirmation) as the heads of the executive branch *departments*. The Cabinet is an important body because its members are the highest ranking officials outside of the White House in the executive branch. Cabinet meetings are attended by the president, the secretaries and other high-level officials such as the ambassador to the United Nations, the director of the Office of Management and Budget and the chairman of the Council of Economic Advisors.

What is meant by the term "the bureaucracy?"
Bureaucracy is the word commonly used to describe the executive branch. Like such words as love and happiness, many people claim to know the meaning of bureaucracy, but few can actually define it! Refer to the *Glossary* at the end of the book.

Who are these people called "bureaucrats?"
Bureaucrats all have at least one thing in common: they are not elected to their positions. Cabinet secretaries, agency directors and regulatory commissioners are appointed to their positions by the president, subject to confirmation by the Senate, and are called *political appointees*. Other positions are reserved for career civil servants and are filled through the merit system rather than political considerations. (For further discussion, see *The Federal Bureaucracy: It's Better Than You Think* in this chapter).

II. THE CABINET AND THE DEPARTMENTS

What are the responsibilities of the secretary?
First, a secretary is the *administrator* responsible for the implementation of programs passed into law by the Congress and executive orders issued by the president within the jurisdiction of his/her department.

Second, a secretary is an *advisor* to the president, recommending new policies and programs and assisting in their development.

Third, a secretary is an *advocate* to Congress and to the public for the policies of the president. This advocacy may take the form of testimony before congressional committees, speeches to citizen groups around the country or press conferences.

How are secretaries chosen?
They are nominated by the president and must be approved by the Senate. Most presidents choose individuals who have experience and expertise in the particular policy area, although political support during the campaign may also be an important factor.

Did the Constitution call for 13 Cabinet departments?
No. In fact, there is no mention of a Cabinet in the Constitution. However, Article II, Section 2 did give the president the authority to create a Cabinet. George Washington's first Cabinet (1789) consisted of only four members: the secretaries of state, treasury, war and the attorney general. The most recently created departments are Transportation (1966), Energy (1977) and Education (1980).

How big are the departments?
Each department includes many subdivisions and separate agencies with specialized functions. For example, the Treasury Department includes such different agencies as the Secret Service, the Internal Revenue Service and the Bureau of the Mint. Each has its own head officer, but the secretary of the treasury retains overall authority and responsibility. The chart *Know the Cabinet*, illustrates this in more detail.

Does each department have the same size budget?
Definitely not. They vary from the $2.4 billion allocated for the State Department to the $266 billion for the Department of Health and Human Services (Figures are for FY 1981).

III. ORGANIZATION AND POWER IN THE EXECUTIVE BRANCH

What powers does Congress have over the executive branch?
The power to defeat or amend a bill to create a department or agency has already been mentioned. A related power is that of *oversight*. All departments and agen-

cies must report to the Congress on their activities and expenditures. Congressional committees can conduct hearings and investigations when there is reason to believe that there has been corruption or inefficiency.

Another very important power is *the power of the purse*. All departments and agencies—in fact, all divisions of the federal government—must have their budgets approved each year by Congress.

What powers do bureaucrats have?
Bureaucrats do possess certain powers themselves as part of their checks and balances. Early in his presidency, John F. Kennedy recognized these powers when he commented to a visitor, "I agree with you but I don't know if the 'Government' will." Bureaucrats can oppose policies with which they do not agree through inaction, ineffective implementation or selective enforcement. Because much legislation is written in very general language, agencies are authorized to establish *regulations* that have the force of law. Through the writing of regulations bureaucrats can influence the effect of programs and policies.

Another factor is the relationship between the regulators and the regulated, between the bureaucrats and the group which they regulate. There has been a tremendous amount of criticism of agencies for defending the interests of groups which they are supposed to regulate.

Who creates new executive branch departments and agencies, the president or Congress?
Both. While in theory the president is the head of the executive branch, this is really a shared power with Congress. New Cabinet-level departments can be created only through a bill passed by Congress. There have been cases where proposals for new departments have been rejected by Congress. A recent example was President Richard Nixon's proposal to reoprganize the Cabinet from 11 to 4 departments. The Congress rejected the Nixon plan.

The process is somewhat different for the creation of non-Cabinet agencies. Under the Reorganization Act of 1977, the president has the authority to create new agencies and abolish old ones, as long as the Congress does not disapprove within 60 days. While this give the president extensive authority, it is still a shared power.

When have new agencies been created?
Throughout our history, political, economic, social and technological developments have led to the creation of new executive branch agencies. For example, the growth of the railroads led to the establishment of the Interstate Commerce Commission in 1887. The successful launching of Sputnik I by the Soviet Union led directly to legislation by the U.S. Congress creating the National Aernoautics and Space Administration in 1958.

What other powers does the president have over the executive branch?
The president has *the power to hire and fire* personnel within limitations established by the Constitution, the Office of Personnel Management and the Congress. Most nominations are subject to confirmation by the Senate.

Another important power is *agenda setting*. The president has the final decision on what programs are given highest priority, and how budget dollars are distributed in his agenda. Those bureaucrats who formulate policies consistent with the president's priorities will receive the most attention, and their agencies will receive the most resources.

Another power is that of *persuasion*. A president cannot force bureaucrats to cooperate with his directives, but he does control certain rewards and punishments that he can use selectively to build support. He also has power that comes from his personal prestige in Washington and popularity in the nation.

A Reagan Cabinet meeting.

Know the Cabinet

The 13 Cabinet departments and the secretaries who head them are listed below. Examples of their responsibilities are listed in a second column. Match the number of the department to the appropriate responsibilities.

Cabinet Departments

1. Agriculture—John Block
2. Commerce—Malcolm Baldridge
3. Defense—Caspar Weinberger
4. Education—Terrel Bell
5. Energy—Donald Hodel
6. Health and Human Services—Margaret Heckler
7. Housing and Urban Development—Samuel Pierce
8. Interior—William Clark
9. Labor—Raymond Donovan
10. State—George Shultz
11. Transportation—Elizabeth Dole
12. Treasury—Donald Regan
13. Justice—William French Smith

__ Air safety standards
Federal highway system

__ Collective bargaining
Unemployment insurance

__ International trade
Promotion of industry and business

__ Public health
Social Security Administration

__ Internal Revenue Service—taxes
Bureau of Alcohol, Tobacco, and Firearms

__ Federal Bureau of Investigation
Immigration and Naturalization Service

__ Food stamp program
Inspection of foodstuffs

__ Urban renewal projects
Relief from natural disasters

__ School lunch programs
Federally guaranteed student loans

__ Research and development
Allocation of oil and natural gas supplies

__ Negotiation of treaties
Foreign Service—embassies and ambassadors

__ Arms sales
Oversight of the Army, Navy, Air Force, and Marines

__ National Park Service
Bureau of Indian Affairs

Highlights of the Defense Budget Process*

Warren H. Milberg

Warren H. Milberg is a retired Air Force lieutenant colonel who was assigned within the Office of the Secretary of Defense, where he was responsible to the Director of Net Assessment for politico-military analyses. His previous assignments involved the preparation of defense budget analyses at the United States Air Force headquarters and the development of policy for the United States intelligence community.

The Department of Defense (DoD) spends a lot of money each year. In 1982, the DoD budget exceeded $200 billion, representing approximately 25 percent of the total annual federal budget of the United States. Simply stated, a budget is nothing more than a list of priorities and an agenda to satisfy them. In this regard, the DoD budget can be viewed as the nation's preeminent defense policy statement. Yet development of the DoD budget is far from simple. For these reasons, informed citizens need a working knowledge of the defense budget process.

To gain an appreciation of this process, it must be understood from the outset that the defense budget is, in fact, a compilation of the individual budgets of the Air Force, Army, Navy, and DoD agencies (such as the Defense Communications Agency or the Defense Mapping Agency). Furthermore, the Department of Defense produces a detailed list of the total resources—military forces, manpower, construction, research and development, and dollars—programmed for DoD and approved by the secretary of defense. This document, known as the Five Year Defense Program (FYDP), projects anticipated financial needs for five years. In effect, each annual DoD budget becomes the baseline upon which the next five year program is built and updated. The DoD budget for FY 1982, for example, becomes the baseline for the FY 1983-1987 Five Year Defense Program.

To manage the DoD budget process, a planning, programming and budgeting system (PPBS) was adopted in the early 1960s. Its purpose is to identify needs (planning), match them to resource requirements (programming) and translate them into budget proposals (budgeting). Although this system has been in effect for nearly 20 years, it is under continuous change and review to accommodate the needs of the changing political administrations it serves.

Before describing the PPBS process in greater depth, it is interesting to note that the Department of Defense may be dealing with four budgets at the same time. This is because it normally takes three years for one PPBS cycle—the production of an annual budget—to go from the beginning planning phase all the way through to the implementation of that budget. In calendar year 1981, for example, the DoD was doing all of the following at the same time:

1) implementing the FY 1981 budget;
2) working toward the enactment of the FY 1982 budget;
3) entering the programming and budgeting phase for the FY 1983 budget; and
4) starting the planning phase for the FY 1984 budget.

Of most concern is the fact that since the phases of a single PPBS cycle overlap, unexpected events occurring in one cycle can have an impact on a cycle in an earlier state of development.

The Planning Phase

The planning phase of the budget cycle is designed to identify the threats facing the United States during the next 5 to 20 years, assess our capability to counter them, and recommend the military forces necessary to overcome them. To guide resource decisions during the planning phase, planning highlights critical needs and measures risks if recommended goals are not attained.

Planning begins when the Joint Chiefs of Staff (JCS) produce the Joint Intelligence Estimate for Planning (JIEP), the principal information basis used for the development of other planning documents. This document describes world power relationships, estimates the capabilities and likely actions within various world regions and discusses regional treaty arrangements. It concludes with recommendations on a strategy to overcome threats to peace and the military force levels needed to carry out that strategy.

Publication of the Joint Strategic Planning Document and Supporting Analysis follows soon after the appearance of the JIEP. It provides advice to the president and the secretary of defense on military strategy and military force levels considered essential to the attainment of U.S. national security objectives and includes recommendations concerning the DoD activities

*Adapted from "The Planning, Programming and Budgeting System," 3rd Edition, Directorate of Programs and Evaluation, Department of the Air Force, November 1981.

that should receive emphasis if additional funds become available.

The next step in the planning process is the development of the "Defense Guidance," which is produced by the staff of the Office of the Secretary of Defense with input and comment from all DoD activities. This important document provides "top down" guidance from the secretary and includes his assessment of threats, policy, strategy, force and resource planning, and fiscal guidance. Fiscal guidance is provided for the next five years and reflects presidential and Office of Management and Budget (OMB) decisions concerning the amount of real growth to be permitted in military programs. Importantly, it also establishes the inflation rates to be used to develop cost factors for each specific program in the budget. As such, fiscal guidance can be seen as the overall constraint, or dollar ceiling, for all Defense Department programs. As each of the budget planning documents mentioned above is issued, the military services are at the same time developing individual planning documents tailored to their specific needs.

The Programming Phase

The primary purpose of the programming phase is to match available dollars against the most critical defense needs and to develop a five-year resource proposal. Once approved, this proposal becomes the basis for actual budgeting action.

Since the programming phase of the PPBS process is where fiscal constraints must mesh with military requirements, this phase starts before planning activity is complete and ends after initial budgeting activity has begun. This phase is characterized by the development and review of program objective memoranda (POMs).

Each of the military services requires about six months of concentrated effort each year to develop its POM since these centerpiece documents:

1) build on the previous year's effort,
2) express each service's five-year program recommendations to meet the objectives contained in the "Defense Guidance," and
3) identify new initiatives.

A point not generally well understood is that a large percentage of the total DoD budget is essentially "fixed." This portion—perhaps as much as 75 percent of the budget—consists of key items to continue peacetime operations and training, maintain essential levels of military readiness, support military installations and pay service personnel. The remaining "flexible" percentage of the budget concerns recommendations regarding increased buying of new military equipment and weapons, modernization of existing forces, increased levels of readiness, and research and development.

In developing POMs, each of the military services has detailed procedures to ensure that the programs and activities recommended are accurately costed and reflect a balance between the many functions each military service must be able to perform.

The program objective memoranda are submitted to the secretary of defense for review at the same time that the Joint Chiefs of Staff provide an assessment of the capabilities and risks associated with the combined recommendations of the military services. At this time the secretary turns to his Defense Resources Board (DRB) to ensure that the recommendations from each military service comply with the "Defense Guidance" and to determine if there are more cost-effective alternatives. Program alternatives—that is, issues—then become the focus of debates over the size and nature of the defense budget. When these issues are resolved, the secretary of defense releases a program decision memorandum, which forms the basis for developing a budget estimate.

The Budgeting Phase

The budgeting phase involves refining costs associated with each defense program and developing an estimate of how much money is required by each military service to accomplish its approved programs. Once again, the DRB meets to review individual programs and alternatives and to resolve issues. Budget analysts from OMB meet often with their counterparts in DoD to evaluate budget estimates in an attempt to identify less costly alternatives. These alternatives are submitted to the secretary of defense for decision. Each of the military services may comment on or appeal these decisions, which are then resolved through the Defense Resources Board process.

Final pricing of items in the approved estimate takes place just after major budget issues are resolved and just prior to the president's decision on the budget he will submit to Congress in January of each year. At this time the president meets with the secretary of defense and the director of OMB to resolve any major issues and to provide new guidance, if any, on the size, composition and cost of the defense budget. These decisions and the president's guidance are then incorporated into the DoD budget estimate and submitted to OMB, where they become part of the larger budget submission for the entire federal government.

The next several months of the budget process involve hearings and other activities by Congress leading to authorization and appropriations legislation—activities that must lead to an approved federal budget before the start of a new fiscal year each October 1st. So the cycle ends only to form the basis for development of the next budget for the Department of Defense, the planning for which began months earlier.

Crisis at the Environmental Protection Agency

An important arm of the presidency is the executive branch, often referred to as the bureaucracy. The bureaucracy comprises government agencies that administer the laws that Congress writes. These government agencies define the laws by writing rules and guidelines to help people follow them. The agencies then enforce the law, a task that might require punishing people or companies that break the law.

One of the most important and controversial agencies in recent years has been the Environmental Protection Agency (EPA). Congress created the agency in 1970 to reverse environmental damage caused by years of American industrial growth and careless pollution. In its first ten years, EPA established strict antipollution rules for industry and automobiles. It was criticized by business and civic leaders who charged that the costs of meeting EPA's antipollution standards were too expensive and were forcing some companies out of business.

The Reagan administration, reacting to public displeasure with federal regulation, adopted a policy designed to eliminate regulations which it believed unfairly hampered industry. One result of this policy was a dramatic shift at EPA. The agency became much more sympathetic to business concerns. Environmental groups charged that the administration went too far to help business by stripping away regulations to improve air and water quality and by not fully enforcing existing antipollution laws. The environmentalists' concerns were shared by some members of Congress during 1983 congressional oversight hearings on EPA's handling of toxic waste cleanups. Congressional investigators accused EPA officials of conflict of interest, "sweetheart deals" with industry, political manipulation of toxic waste cleanup funds, blacklisting of agency employees, perjury, and the destruction and removal of subpoenaed agency documents.

EPA's important regulatory role and the controversy that surrounds it make the agency a fascinating example of how the bureaucracy works and how it is affected by pressures from the White House, Congress, the media, and special interest groups. As you read the case study, think about the following questions:

- How much governmental regulation is necessary?
- What impact does a regulatory agency have on those it regulates?
- Should a regulatory agency consider the cost of its regulations to businesses or local governments?
- What factors make it more difficult for an agency such as EPA to fulfill its legal mandate?
- Why was the Reagan administration's management of EPA the subject of such strong congressional and public reaction?

Background:
The Environmental Movement and EPA

Americans have been concerned about the environment since the nineteenth century. Early environmentalists, interested in preserving forests and wildlife, called themselves conservationists. In the 1960s, new environmental issues appeared as the effects of man-made contamination of the earth, air, and water worsened. Some birds, essential to the ecological system, were becoming extinct because of DDT, a pesticide then used by farmers. Air pollutants from cars and factories had wrapped thick blankets of smog around urban areas and were linked to increases in cases of severe lung problems and even death. The water had become so polluted in some lakes, rivers, and streams that swimming, recreational boating, and fishing were impossible. The Cuyahoga River was so polluted in 1969 that it caught fire near Cleveland, Ohio. These events created increased concern about the environment, giving birth to a wide-ranging environmental movement.

The environmental movement soon expanded into a national crusade. More than thirty national environmental organizations were in operation by the early 1970s. During the 1960s, Congress passed a series of laws to clean the air and water and to govern the disposal of hazardous substances. The Environmental Protection Agency was created in 1970 to administer most of the nation's environmental laws. According to the *U.S. Government Manual*, EPA's role is to "control and abate" pollution in the areas of air, water, solid waste, noise, radiation, and toxic substances and to "mount an integrated, coordinated attack on environmental pollution in cooperation with state and local governments."

EPA's many important responsibilities include establishing national air quality standards; establishing emission standards for new motor vehicles, factories, incinerators, power plants, and chemical plants; su-

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pervising states in their development of clean air plans; administering grant programs to states to pay for 75 percent of the cost of building sewage treatment plants; regulating the dumping of toxic or nuclear wastes into the water or on land; and supervising the cleanup of toxic waste dumps. This last responsibility—covering the cleanups of oil spills, chemical spills, and hazardous waste sites—was given to the agency in 1980 in the "Superfund" legislation (so named because of the large amount of money in it).

Especially important are EPA's research and enforcement functions. Since 1970, when little accurate data existed on many toxic substances, EPA has conducted hundreds of studies tracing the generation and environmental impact of chemicals and industrial wastes. Because the chemical industry markets several thousand new products each year, research needs are endless. Enforcement of environmental laws is extremely complex. Based on technical studies, EPA must create regulations to govern the use and disposal of hazardous substances. Then the agency must enforce these regulations by monitoring the environmental quality, notifying violators, and if necessary, taking them to court and assessing penalties.

During the 1970s, EPA hired a professional staff to serve its office in Washington, D.C., ten regional offices, several laboratories, and numerous field units. In addition to the usual managers and clerical workers, scientists, engineers, and lawyers were needed to deal with complex issues surrounding environmental regulation. EPA had to develop the machinery to regulate many different kinds of substances. For example, to enforce the National Safe Drinking Water Act, EPA scientists conducted tests and assembled evidence about cancer-causing chemicals in drinking water. Although scientific evidence was uncertain, rule makers had to write regulations governing how pure water should be, basing their judgments on complex calculations of risks, benefits, and costs. New EPA rules are issued in the *Federal Register*, along with rules proposed by other federal agencies, for public comment. Public hearings on the proposed rules are held, and after the comments have been considered, the rules are revised and then reissued as binding federal regulations.

EPA fosters voluntary compliance by government agencies, private industries, and communities. EPA also encourages state and local governments to perform direct enforcement activities needed to meet local environmental standards. If state and local agencies fail to produce an effective plan for pollution control or do not enforce their own rules, EPA is authorized by law to take over those responsibilities. If EPA finds a plant in violation of pollution rules, it can order the violator to stop polluting and correct the problem. If the violation is not corrected, EPA will informally negotiate a timetable for making the corrections with the polluter. If the negotiations do not solve the problem, the alleged violator can argue the charge in an open hearing. If there remains no solution, EPA can sue to enforce compliance. Penalties for violating environmental laws can be severe. For example, a violation of the Clean Air Act amendments carries with it a fine of $25,000 per day for as long as each violation continues. The polluter can also be sentenced to a one-year jail sentence.

EPA has succeeded in curbing pollution and its effects in many areas. Rivers that were once too polluted to support life are now thriving with fish. Likewise, air quality alerts are far fewer in most major cities than they were ten years ago.

However, complying with antipollution regulations can be a very expensive task for a business or local government. Business leaders have complained that to fulfill the requirements of some EPA laws and regulations, a company may be required to:

- Monitor its antipollution compliance round-the-clock;
- Create new technology to meet a level of compliance not achievable with available technology;
- Invest millions of dollars to purchase new equipment or to modify existing equipment;
- Assume the additional costs of operating new or modified equipment;
- Follow highly complex and relatively more expensive procedures to meet standards, rather than use cheaper means to reach the same goals;
- Comply with a tough standard, even though tests have not proven that such high standards are required; and
- Adapt to frequent changes in rules.

Meeting these regulatory demands can cost industries millions of dollars a year. A study of forty-eight major industrial companies (conducted for The Business Roundtable by the accounting firm of Arthur Anderson & Company in 1979) estimated that the cost of EPA regulations to these companies was $2.018 billion in 1977.

Business executives, such as James E. Lee, president of Gulf Oil Corporation, argue that such money is not being well invested. Writing about the Clean Air Act in *Newsweek* magazine, Lee complained that

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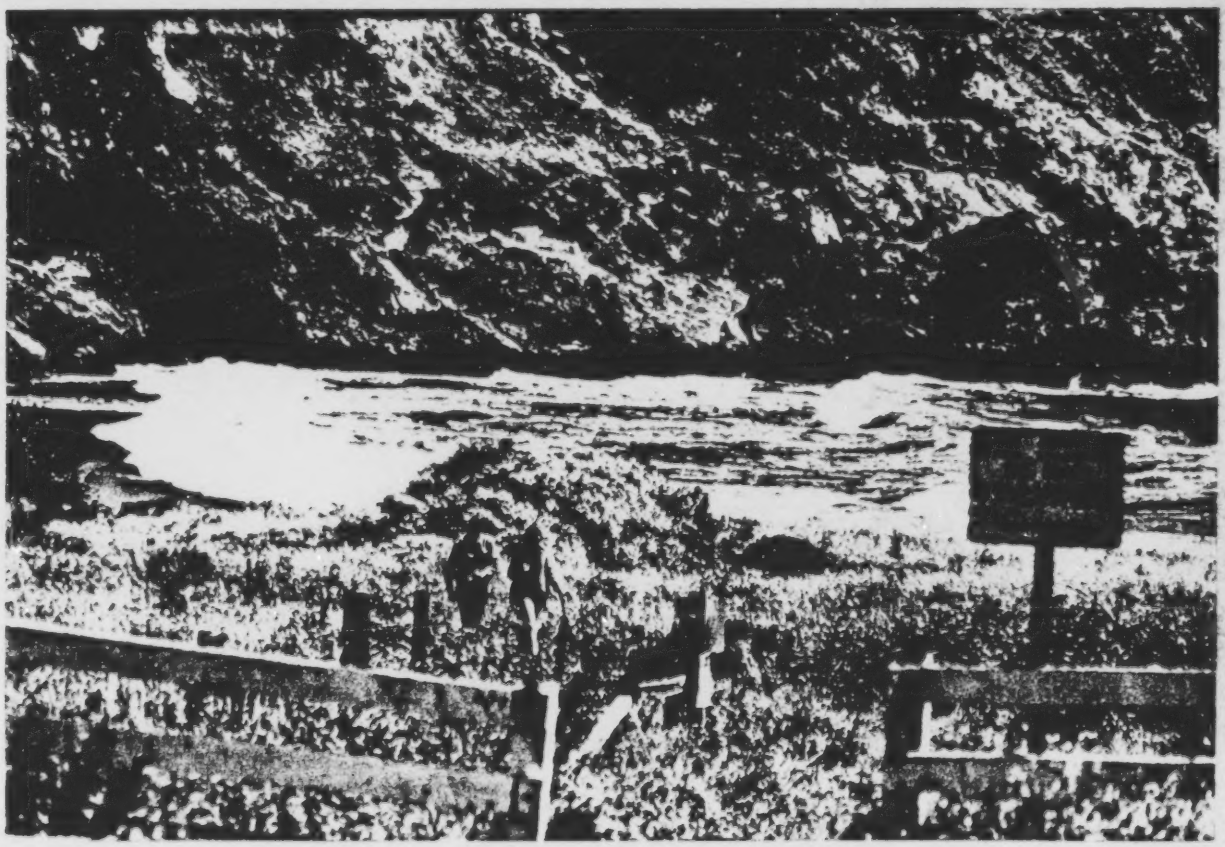
although his company spent $125 million in 1980 to comply with clean-air regulations, the pollution was not reduced by as much as possible because of the stringency of EPA's regulations. He said:

> A significant amount of the money invested in complying with Clean Air Act regulations has not markedly improved air quality. Compliance is not synonymous with achieving results. Consequently, the act is in danger of losing credibility as an effective and realistic instrument for meeting environmental goals. Some people in our country are beginning to feel the frustration of a diner who runs up a big bill for a less than satisfactory meal.

Industry representatives, alarmed at these costs, also feel threatened by EPA's regulatory functions, which require information about product ingredients and other data they consider to be in the realm of trade secrets. In addition, EPA regulations often restrict the freedom of corporations to produce and market new products. Although most business leaders agree with environmental goals, the means that EPA has used to achieve those goals has led some corporate executives to regard EPA as an enemy of free enterprise and a threat to American jobs.

The average American has learned of the negative side of EPA regulations through their effect on local and state governments. In order to enforce the Clean Water Act and other legislation to improve the quality of streams and rivers and the quality of drinking water, EPA has sometimes forced small communities to pay for a portion of expensive sewage treatment plants. Although EPA pays a large share of the expenses, smaller towns have found that their share of the cost is beyond their ability to pay. Consequently, these towns had to increase residential sewer and water fees to make up the difference.

A case in point was the difficulty that residents of Manassas, Virginia, and their water and sewage authority, the Upper Occoquan Sewage Authority (UOSA), had with EPA during the 1970s. In 1969 and 1970, studies showed that UOSA's existing sewage treatment plants were inadequate and were dumping waste water into the Potomac River, creating a major pollution problem. UOSA officials decided to correct the problem by building a new waste treatment plant, replacing the old plants. Originally, UOSA planned to build the new plant in stages, first building the plant proper, then the pumping stations away from the plant, and finally the sewer lines that would have brought the sewage to the new plant.



From its creation, EPA was given the difficult task of cleaning up the environment and regulating industrial and automobile pollution.

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The total cost using this method would have been approximately $49.4 million and would have been completed in two and a half years.

EPA officials rejected the plan in 1973, citing a new rule that required that each stage of the plant be built in "operable units." UOSA's approach was unacceptable to EPA because sewage would not be treated by any part of the plant until all stages were completed. EPA told UOSA that it would have to build the plant so that each stage could be opened immediately as an "operable unit" that would treat sewage "better" than it was before. UOSA redesigned the construction plans as EPA demanded, but instead of the new plant costing $49.4 million, the price increased to $82 million and took three years longer than planned. Residents of Manassas and adjacent communities had their water rates doubled, and in some cases tripled.

During the Carter administration, EPA began to respond to the criticism against it and to correct the problems. The "operable unit" rule that affected UOSA was withdrawn by EPA because of its cost and because it delayed completion of sewage treatment plants. EPA officials during that administration also developed an innovative approach to clean-air regulation. Early regulations required that each factory or power plant smokestack be modified to meet antipollution standards. The new approach placed an imaginary bubble over the entire plant and said that the factory had to make sure that the total emission from all of the smokestacks under that bubble met the standards. Some smokestacks could be greatly modified and others left totally unchanged, giving companies the flexibility to achieve the goals at a lower cost. Industry hailed the "bubble" rule, but EPA remained a regulatory monster in the eyes of many Americans.

Ronald Reagan's Antiregulation Platform

In the 1980 presidential campaign, Ronald Reagan, as well as many Republican candidates for Congress, campaigned against "big government." Reagan's speeches appealed to the feeling among many voters that government regulations, particularly those of EPA and of the Department of Labor's Occupational Safety and Health Administration (OSHA), were wasteful and intruded too deeply into their lives. Candidate Reagan argued that regulations that did not consider economic costs were crippling the economy and robbing businesses of profits, consumers of low prices, and workers of jobs. In a speech to farmers in Waterloo, Iowa, Reagan said:

> The choice is not, as some would have us believe, between regulation or no regulation. Government has an obligation to protect us from each other and to provide for the public's health and safety. Therefore certain sensible, reasonable regulations are in order. Unreasonable, nit-picking regulations carried to absurdity, harassing and financially crippling the economy, are unnecessary. The law regarding pesticides, for example, provides for taking into account not only the hazards in their use but also the economic, social, and environmental benefits. EPA often ignores this part of the law and enforces its regulations on a "no-risk" basis.

The Republican party platform, which was written largely by Reagan supporters, was more specific, blaming previous administrations, particularly the Carter administration, for creating a "crisis of overregulation." The platform said: "Excessive regulation remains a major component of our nation's spiraling inflation and continues to stifle private initiative, individual freedom, and state and local government autonomy." The platform advocated "policies and programs which will revitalize the free enterprise system and reverse the trend toward regulation."

On this platform, Ronald Reagan was elected president. He interpreted the election as a mandate to change patterns of regulation by the federal government. After taking office, President Reagan quickly implemented many of his ideas about regulation, such as a freeze on new regulations and cost-benefit reviews of every proposed regulation. He appointed like-minded individuals to important regulatory positions. These people were essential if the president was to succeed in curtailing regulations. Although the president could have proposed new legislation to ease the regulatory burden on industry, administrative actions could take much less time and could achieve much more.

The people President Reagan appointed were as controversial as anything he actually proposed. The nomination of James Watt as secretary of the interior was among the most controversial. This presidential action seemed a direct affront to environmentalists who disapproved of Watt's association with pro-industry forces that fought environmental laws to ensure private industry's ability to exploit natural resources as well as their protection from environmental regulation. President Reagan's nomination of Anne M. Burford to be administrator of EPA also disturbed environmentalists. (During her first two years in office, before her marriage to Robert

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F. Burford, director of the U.S. Bureau of Land Management, Burford's name was Anne M. Gorsuch.) A corporation lawyer and conservative Republican member of the Colorado House of Representatives, Burford was a close friend and ally of Watt. Her record showed opposition to most legislative attempts to regulate and protect the environment. Environmental groups strongly, but unsuccessfully, lobbied to have her nomination reconsidered or rejected.

EPA Administrator Anne M. Burford was accused by critics in Congress and environmental groups of being overly sympathetic to the industries she was appointed to regulate.

What Watt and Burford wanted to do, on behalf of the president, became clear from what Burford told the Senate committee that held hearings on her nomination: "I think there is a real initiative in this administration to do away with those regulations which are unnecessary and overly burdensome." In answering questions about rumored budget cuts and EPA independence, Burford was tough and unbending. She called for a new approach at the EPA: "EPA must be nonconfrontational with industry in its approach, leading by action and encouragement. I assure you that, if confirmed, this will be my guiding credo." In other words, EPA would try to enforce the laws, as it saw them, through quiet encouragement rather than through threats or legal action.

In addition to Burford, the Reagan administration wanted to replace other top Carter administration officials at EPA with people loyal to President Reagan. Several top jobs remained vacant for many months while the White House looked for politically acceptable candidates. New appointees were Republicans with ties either to industry or to lobbying organizations that opposed strong environmental controls. Among these was James Sanderson, a Colorado lawyer who acted as Burford's policy consultant and was Burford's choice for a high agency position. Another Reagan appointee to EPA with similar industry ties was Rita Lavelle. In 1982, Lavelle left a job with Aerojet General Corporation, a California company that was accused of dumping toxic wastes in the Stringfellow Acid Pits, to head EPA's hazardous waste cleanup program. The pattern of appointments in the agency, according to environmentalists, suggested more responsiveness to industrial interests than to environmental concerns.

President Reagan's budget proposals for EPA also reflected his antiregulation goals. In March 1981, he asked for a 74-percent reduction in the agency's fiscal year 1981 budget authority. Most of the budget cut would come from construction grants to cities for building sewage treatment plants. Congress later restored part of the money. That summer, the president proposed to rescind an additional $100 to $112 million from the agency. Even Burford complained that some of the cuts went too deeply into the agency's budget.

Environmentalists were also dismayed with a report of the president's Task Force on Regulatory Relief, chaired by Vice President George Bush. The task force proposed more than fifty changes and relaxations in regulations, including moderating the Clean Air Act. Finally, President Reagan ordered that all new federal regulations be submitted to the Office of Management and Budget (OMB) for cost-benefit analysis.

Congress and many environmentalists suspected that EPA would be unable to fulfill its mandate. Congressional dissatisfaction with EPA was indicated by the appearance of EPA officials before congressional committees more than 70 times between October 1981 and July 1982 to defend agency management; Burford herself was called to testify on numerous occasions.

Members of Congress and former EPA administrators strongly criticized Burford's management of the agency. One of Burford's first actions was to abolish the Office of Enforcement, replacing it with a much smaller staff. She also reduced the number of enforcement cases earmarked for court action and began reviewing pollution control rules to ease regulatory burdens on industry. Furthermore, Burford reduced the number of EPA employees involved with enforcing environmental statutes by 15 percent from 1981 to 1982.

EPA's critics charged that Burford was helping industry by not enforcing the laws. A report by the House Energy and Commerce Subcommittee on Oversight and Investigations noted that EPA en-

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forcement of major rule violations dramatically decreased between 1980 and 1981. The number of cases EPA referred to the Department of Justice for prosecution decreased from 252 to 78, a 69-percent decline. The report said:

> While the EPA administrator has consistently justified cutbacks in federal enforcement resources on the grounds that state agencies can handle substantial increases in environmental enforcement responsibilities, the agency does not possess the necessary statistical data to justify the administrator's broad-brush assertion.

The report further noted that EPA proposed a 20 percent reduction in state environmental grants in fiscal year 1983 and that EPA announced its intention to phase out those grants completely in later years. A survey of states conducted by the National Governors' Association Energy and Environment Committee found that most states would not be able to absorb the cuts in federal funding and would have to curtail the number of environmental protection activities proportionally.

Administering the Superfund

These controversies are relatively mild compared to that surrounding the administration's management of a law called the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The act, passed in the last days of the Carter administration, is generally known as the Superfund. The law established a fund of $1.6 billion—financed largely with a new tax on chemical products—to clean up hazardous waste sites in the United States. Because EPA was designated to administer the Superfund, Anne Burford found herself in the position of having to administer a law that would vastly increase the regulatory role of the federal government, a role the president wanted to reduce.

The new law presented a host of technical and administrative difficulties. For example, the demanding task of identifying potential hazardous-waste sites or dumps seemed endless. Many highly toxic locations were well known, but thousands of others had been out of use for years and forgotten. Under the Carter administration, EPA began to inventory potential sites. By February 1981, after President Reagan's inauguration, more than 8,800 sites had been identified. Twenty-two locations were under remedial care, and at least 100 more were classified as dangerous. In July 1981, some 9,600 possible sites had been listed. By October of that year, Burford announced a list of 115 top priority Superfund sites to clean up. Actually, EPA had already begun to take action at most of these sites.

Shortly after identifying the top priority sites, EPA began to seek the parties responsible for polluting the 115 sites, including owners, former operators, waste dumpers, and transporters. (In some instances, finding the polluters was impossible.) Then the agency sent hundreds of notification letters to the firms and individuals responsible, asking them to negotiate cleanup procedures.

If negotiations did not produce compliance, the next step in enforcement was for EPA to institute legal proceedings against violators. If none of these measures produced results, the agency authorized expenditure of Superfund money to remove toxic substances. Nonetheless, agency policy remained "to make a vigorous effort to secure cleanup by responsible parties instead of expending Superfund dollars."

The most important element of Superfund implementation, the National Contingency Plan (NCP), delineated the responsibilities of EPA, other federal agencies, and the states in dealing with hazardous waste sites. The agency began preparing this plan in 1980 while Jimmy Carter was still president. When Anne Burford became EPA administrator in 1981, a draft of the NCP was ready for her examination. Burford disagreed with many elements of the plan, returning it to the Superfund staff for revisions. After rejecting the plan again, she had her own advisors redraft it before sending it to the OMB for approval. Because the plan's release had been delayed long beyond the June 1981 statutory deadline, the Environmental Defense Fund and the state of New Jersey resorted to a lawsuit demanding that EPA release the plan. Finally in March 1982, the NCP was issued as a proposed rule.

The National Contingency Plan, as it was finally released, was a blueprint to guide EPA in carrying out the Superfund law, going into some detail about the organization of waste cleanups. State-federal collaboration is the plan's cornerstone. States use a Hazardous Ranking System to evaluate and rank waste sites; then EPA prepares a National Priorities List of at least 400 of the most dangerous sites. Superfund money can be used for immediate removal of hazardous substances where there is an emergency, such as danger of human contact with poisons. More commonly, the Superfund will support long-term remedial action to plan cleanup or control of releases. The NCP distributes authority to national, state, and local agents that participate in cleanup efforts. The plan requires state governments to pay 10 percent of the costs of most cleanup actions. Cost-effectiveness and cost-benefit analysis figure prominently in determining any remedial action.

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Lavelle expressed great satisfaction with the NCP:

> It represents regulatory reform at its best, providing a flexible framework on which to make decisions on the extent of cleanup at any hazardous waste site, as well as guidelines for appropriate response roles on behalf of the thirteen federal agencies, states, and other involved parties in emergency response efforts. I am proud of the NCP, which is a streamlined document usable by those in the field as well as those at desks.

Other parties were not so pleased. Environmentalists and their supporters in Congress expressed dismay at several aspects of the plan. Senator Daniel P. Moynihan (D-N.Y.) complained about the long delay in issuing the NCP, more than a year after it had been required by the Superfund law. Another issue, which was addressed by the congressional Office of Technology Assessment, was "how clean is clean?" and how clean the sites would have to be.

Environmentalists feared that under the Reagan administration, cost—not protection of people—would be the governing issue in hazardous waste cleanup. A spokesperson for the Environmental Defense Fund told a congressional committee that, according to the NCP, EPA would decide on a cleanup option for a specific site based on the lowest cost alternative that provides *adequate* protection of public health and the environment. Conceivably, a plan that leaves contaminants that could poison drinking water could be acceptable to EPA if the price was right, the critics alleged.

With the controversies over budget and regulatory enforcement, the reputation of EPA's management among environmentalists and many members of Congress had reached a new low by the summer of 1982. Two closely related, yet coincidental events swiftly raised the issue's intensity over the next nine months. The first event was congressional oversight hearings in the fall of 1982 on EPA's failure to give details of its Superfund cleanup plan. The second event occurred in Times Beach, Missouri, in December 1982, when flood waters picked up large amounts of the deadly chemical dioxin from roadbeds and spread it over fields and in houses throughout the community, forcing the townspeople to evacuate their homes forever.

Congressional Oversight of the Superfund

Congress is generally thought of primarily as a legislative body, making laws for implementation and enforcement by the executive branch. In practice, Congress must also examine the administration of laws by the executive branch to determine whether the intent of the laws is being observed.

Less than a month after President Reagan's inauguration, Representative James J. Florio (D-N.J.) chaired the first House oversight hearings on Superfund. Later, hearings were also held in the Senate Subcommittee on Environmental Pollution, chaired by Senator John Chafee (R-R.I.). Chafee and Florio's investigations during 1981 centered on EPA's low spending plans for Superfund, questioning how EPA intended to implement cleanup operations with such little funds. Florio criticized Burford and other EPA officials for neglecting Superfund, which Congress had passed with great urgency in December 1980.

The urgency behind the Superfund legislation was that there were literally thousands of places where toxic wastes had been dumped and often forgotten. In 1978, residents of Love Canal, a neighborhood of Niagara Falls, New York, discovered that they were frequently getting sick because their neighborhood had been built on top of a forgotten hazardous chemical waste dump. Love Canal residents were eventually forced to leave their homes forever to protect their health. Who knew how many other communities would have to pick up and leave because of such hazards?

In 1980 Congress gave EPA the responsibility of finding and cleaning up thousands of abandoned toxic waste dump sites.

In July, Florio's subcommittee interviewed Burford. Florio warned Burford against delaying Super-

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fund implementation. He insisted that professional EPA employees in regional offices be given more flexibility to enforce the law. "It was Congress' hope and intention that these enforcement mechanisms be used in a very aggressive manner, as a catalyst for self-cleanup by responsible parties who have created these toxic disasters," Florio said. Other representatives suggested that Burford and the Reagan administration might have a "hidden agenda," or secret plans, to turn EPA into an organization incapable of strict enforcement of regulations.

Burford vigorously defended her Superfund program—stating that full implementation of Superfund was her highest priority—as well as the entire Reagan administration environmental policy:

> I would ask this committee, as well as all of the Members of Congress, to examine the...facts. There is no hidden agenda in this administration. As I indicated...there is a very overt and very real agenda, and that is to carry out our congressionally mandated responsibilities in environmental matters...and likewise to do a better job of it than has been done in the past with fewer resources, both in terms of dollars available and personnel.

Although the oversight hearings did not conclusively prove that EPA officials had a "hidden agenda" of deregulation, many members felt the testimony pointed to a purposeful delay in implementing the Superfund legislation.

Florio strongly criticized EPA for accumulating millions of dollars in the Superfund and lagging in the cleanup. About 86 percent of the Superfund comes from quarterly taxes on chemical companies and 14 percent from the federal government. By June 1982, the Superfund had taken in $300 million in taxes and allocated about $147 million for removal actions as of July. "The only plausible explanation I can suggest [for EPA not spending the money] is that the administration is looking for ways to offset the massive [federal] deficit," said Florio.

Agency leadership was also accused of being overly friendly and uncritical toward industry. Said one witness:

> If you look at who is now in charge of these enforcement agencies in the EPA and the like, you find a lot of people who used to be in the industry or industries that we are attempting to bring enforcement actions against. It is understandable that in their head they think they never did anything wrong before and that the people who they now are supposed to bring enforcement against are not doing anything wrong either.

Two other problems appeared to prevent strong enforcement. One was a pattern of frequent reorganization and staff turnover within EPA. As their supervisors were reassigned and their duties changed, members of the legal staff were uncertain as to what they were expected to achieve. According to a member of Congress, the agency was in a perpetual state of reorganizing for nine months. Enforcement divisions were eliminated. Technical personnel were transferred to other departments, and attorneys were sent back to regional counsel offices.

In midsummer 1982, five of the subcommittees in the House of Representatives called unusual joint oversight hearings to evaluate EPA after a year of Anne Burford's leadership. EPA and Democratic representatives were on a collision course. Republicans called the hearings a "witch hunt," accusing Democrats of staging a "five-ring circus" for their political benefit in the 1982 elections. In fact there was extensive political posturing during these hearings with complaints from both sides that the other had turned the environment into a political issue. During the hearings, representatives and witnesses reviewed many issues already raised in earlier oversight efforts. Again the members of Congress criticized EPA's budget cuts and their impact and the reduction and realignment of EPA's staff.

Burford responded, arguing that she could do her job better, not by spending federal Superfund dollars on cleanup, but by encouraging companies that created the damage to pick up the tab themselves.

> We have two ways of going, both of which are available tools under Superfund. One is to try to get private parties to initiate cleanup with their dollars initially. If that doesn't work, indeed, you have given us a second tool, to expend the fund's moneys and later to seek cost recovery. We are seeking wherever possible to follow the first avenue. And the rationale for it is essentially what I think the Agency is directed to do, the earliest possible cleanup of Superfund sites, the protection of the health and welfare of the people.... We could go after the second route in all instances. I think what we would have there is lots and lots of cases filed at the Department of Justice, lots and lots of litigation, lots and lots of delay, and, potentially, some recompense to the fund. We will be continuing to pursue initial up front moneys from private parties as being the first investment wherever possible and, where that isn't, collection and reimbursement to the fund. It is indeed our focus.

Burford denied that this policy meant that EPA gives industries favored status. Burford said that EPA's door is open to all interested and affected groups so that they can take part in the regulatory process.

Although Burford was a strong witness, her testimony at the one-year review oversight hearings changed few minds. Many representatives simply did not believe her. The issues had become part of the political controversy between environmentalists and the Reagan administration.

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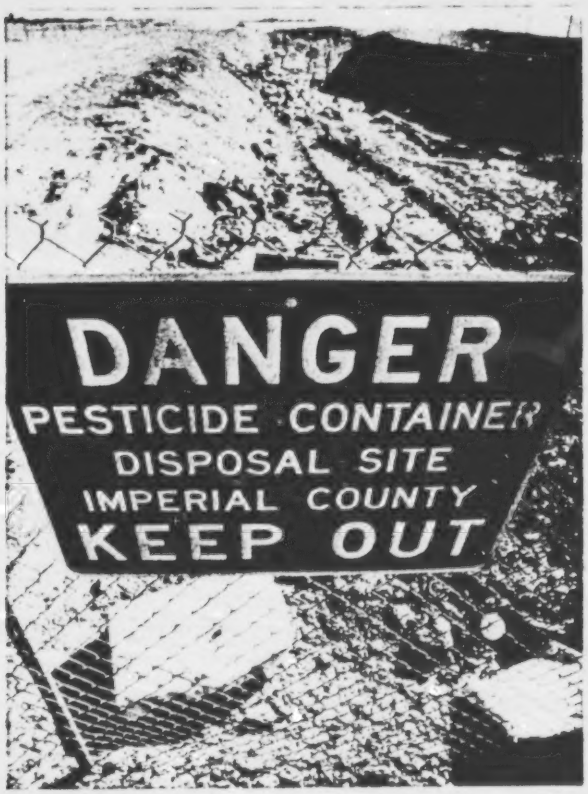
Congressional oversight of EPA and its handling of the Superfund continued. The Senate Subcommittee on Environmental Pollution of the Committee on Environment and Public Works held a hearing on August 4, 1982, examining the agency's follow-up investigation of the Love Canal incident. Through hearings such as these, critics of the administration had the opportunity to vent their suspicions, and investigators had a chance to find out if any of the allegations were true. Like bloodhounds, the investigators stayed close on EPA's trail looking for any hint of scandal.

National attention began to focus on these investigations. If anything, interest intensified as reports spread about toxic waste contamination of many neighborhoods and towns. The most famous of these towns was Times Beach, Missouri. During the early 1970s, the dirt roads in Times Beach were covered with oil mixed with dioxin. Although little was known about dioxin, a by-product of an herbicide, it was routinely mixed with oil and sprayed on roads and fields throughout Missouri and other areas to simultaneously dispose of the chemical and hold down the dust. Later it was discovered that dioxin is one of the most toxic substances known; it is so toxic that .0000006 of an ounce can kill a two-pound chicken.



In the winter of 1982, flood waters from the Meramec River forced twenty-five hundred Times Beach residents to leave their homes. When they returned, they found that the flood waters had spread the dioxin from the roads and deposited it in homes and fields throughout Times Beach. Ultimately, EPA was forced to use Superfund money to "buy" the town and relocate its residents.

In the months that followed, more stories emerged about toxic waste forcing people to leave their homes. Missouri officials estimated that more than 100 inhabited sites may have been contaminated by dioxin. As more and more stories emerged, criticism of EPA's Superfund policy increased.

With the increased attention that these reports brought to the issue of toxic waste, members of Congress and the media focused more on EPA's Superfund efforts.

Superfund Gives Birth to "Sewergate"

As investigators began putting together the pieces from the hearings and events, the ingredients of an EPA scandal began emerging during the first two years of congressional oversight hearings. Critics of the Reagan administration still suspected EPA of manipulating its policies to protect industry at the expense of the health and safety of Americans. Investigators suspected that a February 1982 EPA decision to suspend a ban on burying drums of hazardous liquids in landfills was a result of a pro-industry bias at EPA. The ban had been imposed because dangerous leaks from decaying drums posed health problems. The ban's suspension meant that chemical companies could again bury their hazardous wastes. Three weeks after removing the ban, EPA reimposed a partial ban on liquid dumping after receiving numerous complaints from environmental groups and members of Congress. Newspapers reported other incidents of weakening regulations, such as the suspension of rules requiring hazardous waste generators to keep detailed records and the relaxation of limits on carbon monoxide in automobile and truck exhaust.

EPA employees began spreading confidential information, or "leaks," to the news media. Some information came from a "whistle blower" within the agency, Hugh B. Kaufman, assistant to the director of the hazardous site control division and career employee at EPA. Kaufman offered frequent interviews to reporters and often spoke to congressional investigators. Other EPA staffers anonymously provided information to environmentalists and congressional employees. These civil service employees in-

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cluded professionals who run the government regardless of which party is in the White House. Occasionally, administrations found that civil service bureaucrats were a major source of resistance to administration policies when the bureaucrats considered the policies to be bad or in violation of the law. "Whistle blowing" has been a major tool of disgruntled bureaucrats to oppose administration policies. Civil service laws make it difficult to fire civil servants without a lengthy hearing process.

The reports from Kaufman and his coworkers were not strong enough by themselves to create a scandal, although the administration was known to be sensitive about the possibility of a scandal. What turned the critics loose was the administration's decision in September 1982 not to release some Superfund documents to House committees. The administration claimed that the documents, if released, would disclose vital information about the administration's strategy for suing violators. Congressional investigators, however, saw it as a cover-up of sorts. Later, the president asserted executive privilege over the documents and ordered Burford not to release them to the House of Representatives. The House retaliated in a December 16th vote, citing Burford for contempt of Congress. She was the first cabinet-level official ever to be cited for contempt.

Why did the administration claim "executive privilege"? The claim sparked memories of Richard Nixon's excuse for not giving congressional investigators access to tape recordings, ultimately implicating him of obstruction of justice in the Watergate scandal. *Newsweek* magazine reported some possible theories:

> Some White House aides blame the constitutional struggle on inexperienced Justice Department lawyers who in their view invoked executive privilege too quickly and left the White House to defend the principle in a case that did not warrant it. But critics charge that the administration's real motive was to limit Congress's oversight functions—which, given the proliferation of subcommittees claiming jurisdiction over the executive branch (forty-four over the EPA alone), has a certain plausibility. An even more sinister view is that the Justice Department, in refusing to respond to the Burford contempt citations, may have been trying to protect the administration at the expense of enforcing the law.

What the media soon referred to as the "Sewergate" scandal unfolded from January through March 1983. New revelations fueled the scandal when President Reagan fired EPA Assistant Administrator Lavelle, who was in charge of the Superfund, after a bitter power struggle between Lavelle and Burford.

The Reagan administration never exactly made clear why Lavelle was fired. Lavelle may have been considered a potential embarrassment to the administration because she had not carefully disguised her pro-industry bias. According to some sources, Burford demanded her resignation after she saw the draft of a memo from Lavelle to the White House sharply criticizing EPA's general counsel, Robert Perry. The memo accused Perry of "systematically alienating the primary constituents of this administration, the business community." Those words represented the kind of sentiments that Reagan officials had often been accused of, especially by environmentalists, but had never actually acknowledged. The memo also criticized Perry for his attempts to "scuttle" negotiated settlements with chemical companies responsible for three of the nation's worst toxic waste dumps. Referring to one of the cases, Lavelle's memo said, "he resisted settlement throughout, opting always for litigation."

Friends of Lavelle told the *Washington Post* that her feelings and ties with industry were no greater than those of any other top executives at EPA, including Burford, but that Lavelle was less careful in disguising her feelings. Said one unnamed friend in the *Washington Post* article:

> Rita, I'm afraid, tended to identify more with the industry position in her own mind. It's hard to say how she crossed the line, though. She enjoyed having lunch and dinner with industry representatives. You do that, but people usually do it equal time with public interest groups.

In the aftermath of her firing, Lavelle was accused of withholding and destroying important documents (with a paper shredder), manipulating the Superfund for political purposes, and arranging "sweetheart deals" with business interests. Lavelle's calendars showed that she had accepted many meals from chemical industry lobbyists. According to her appointment books, obtained by Senate investigators, Lavelle frequently dined with chief executives of chemical companies under investigation by the hazardous waste program she directed. One entry in her appointment book showed that she had dinner with a representative of Stauffer Chemical Company on the night before EPA signed an agreement with Stauffer to clean up a hazardous waste site in Massachusetts. These charges were serious as they amounted to a form of *conflict of interest*, that is, she was allowing her former business associates to have undue influence, rather than considering equally both sides of the issues involved and deciding the cases on the basis of public interest.

"You pursued people more vigorously in the restaurants than in the courts," said Senator John

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Chafee. Although she said she was not negotiating actual settlements over the dinner table, Lavelle defended her meetings with industry officials. "My job was to sell the agency approach," said Lavelle, "...that we were willing to negotiate before we would litigate." Representative Elliott Levitas (D-Ga.), chair of one of the six congressional committees investigating "Sewergate," criticized Lavelle's approach as a form of "sweetheart deal" because "the major contaminators bought out and got themselves relieved of responsibility for a fraction of what it's going to cost to clean up that site. The taxpayers are going to end up eating the rest of the cost."

Lavelle told the congressional committees that she believed she was a scapegoat—an attempt by the White House to divert attention from the president and disguise the fact that the policies and methods she employed were backed by the White House. Lavelle told the Senate Committee on Environment and Public Works:

> I thought I was managing the program consistent with the policy direction of this administration, and, in fact, I have a number of support reinforcements that I was doing this....The administrator up to the point of my dismissal was supporting the approach as opposed to litigation—not in lieu of litigation but complementing litigation.

Another conflict-of-interest charge focused on James Sanderson, a close friend of Burford and a former EPA consultant. Sanderson allegedly obtained favorable treatment for two clients and influenced Burford on their behalf. It was reported that, while working for EPA, he had a damaging conflict of interest with a major waste management firm. He was also accused of influencing Burford to give multimillion-dollar contracts with the agency to the same firm after the company had dumped hazardous liquids in a Denver, Colorado, landfill. The association between Sanderson and Burford added to the appearance of wrongdoing.

During the congressional investigation, charges were raised that the White House had manipulated Superfund cleanups of toxic waste dumps to help Republican candidates. Handwritten notes of a closed meeting between Lavelle, White House Assistant Jim Medas, and Lavelle's aide, Susan Baldyga, who took the notes, disclosed that Medas said that EPA should help several Republican and conservative political candidates favored by the Reagan administration. For example, the notes said EPA should single out New Jersey Governor Thomas H. Kean and "help him all we can." EPA followed through, apparently, by announcing sixteen cleanup grants in New Jersey in September 1982, the second largest that month.

The political manipulation of Superfund cleanups did not surprise most political observers. Executive branch officials frequently help out friendly incumbents with their reelection campaigns by approving grants for highways or expansion of nearby military bases, thus giving voters the impression that their representative has clout with the White House. However, the charges of White House manipulation of Superfund cleanups were scandalous because of the additional charges of favoritism to industry.

Dioxin Issue Seeps Back to Poison EPA Credibility

Dioxin, the source of contamination at Times Beach, Missouri, caused other problems for EPA's reputation. Agency officials had been relatively unconcerned about the hazardous substance, a by-product of producing herbicides and disinfectants. Testing of the effects of dioxin on animals showed that it produced cancer and severe damage to the liver, but scientists disagreed about the poison's effect on humans. EPA officials were not certain what standards to use in regulating dioxin. The agency even permitted herbicides containing dioxin to be used under certain circumstances. An EPA investigator who discovered the dioxin contamination in Missouri was discouraged from pursuing his work. Public awareness of the agency's poor record on dioxin further damaged its reputation.

More damage was done with the revelation that the EPA deputy administrator, John Hernandez, Jr., ordered a report on dioxin contamination by Dow Chemical Company to be altered so as not to offend the manufacturer. Problems relating to dioxin illustrated two difficulties of the agency—its in-

Workers in protective clothing begin the task of resealing rusted drums of toxic chemicals from an old toxic waste dump.

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ability to define some of the scientific issues involved in regulation and its tendency to ease restraints on chemical producers.

These difficulties reappeared in press accounts of EPA efforts to implement the Superfund at specific hazardous waste dumps. For example, at the Stringfellow Acid Pits near Riverside, California, some 170 companies deposited thirty-two million gallons of dangerous chemicals over a sixteen-year period. EPA delayed organizing a cleanup of the dump, which allegedly caused a variety of illnesses to people living nearby. Critics accused the agency of delaying the work for political reasons, but EPA officials insisted they were only trying to identify firms that had used the dump in order to secure payment for the cleanup. One problem at Stringfellow was that many Reagan administration supporters and officials, including Lavelle, had ties to companies that used the dump. Another site where polluters had political affiliations was Seymour, Indiana. There too, Republican officials applied pressure for settlement rather than EPA court action. EPA negotiated with twenty-four companies for $7.7 million to remove sixty thousand leaking drums of chemicals. According to critics, the arrangement was a "sweetheart deal" for the companies, allowing them to get away without paying the full cost of removing toxic substances. At another dump, the Chem-Dyne site in Ohio, drums of dangerous wastes leaked while EPA and local officials argued about how to manage a cleanup.

Resolving Sewergate

The Sewergate scandal took a heavy toll on the Reagan administration's credibility. Increasingly, Republican members of Congress were stating that the only way for the president to defuse the crisis was to fire EPA Administrator Burford. House Minority Leader, Representative Robert Michel (R-Ill.), urged Burford to step aside in the interest of EPA: "That agency simply needs a clean sweep if it is to be managed efficiently." In a letter to her colleagues, Representative Claudine Schneider (R-R.I.) wrote that the EPA scandal had already come "dangerously close" to sweeping Democrats into sole control of the environmental issue. A *Newsweek* poll in March 1983 confirmed this impression, showing that disapproval of Reagan's environmental policies had increased from 40 percent in 1982 to 47 percent in 1983.

The Reagan administration wanted to calm the scandal without forcing Burford to resign (unless she was proved of wrongdoing, the president said). In February, the president announced he would turn over the documents previously withheld from the House subcommittees. But the conditions he attached to the settlement were not acceptable to the House committee chairs. President Reagan also forced out two controversial EPA officials late in February. Under increasing pressure, the president continued to defend Burford. A *New York Times* editorial (February 16, 1983) summed up the charges against Burford and concluded:

> Mrs. Burford is charged with protecting the nation's air, land, and water from filth. Instead she has polluted the EPA's reputation for impartial administration of science and law. Only with her departure can repair of the damage begin.

Rumors of Burford's resignation abounded in the press during the first days of March. On March 10th, the EPA administrator resigned under pressure from the White House. She left without admitting any wrongdoing, denouncing her critics and what she called "government by allegation."

Criticism of other top EPA officials for conflicts of interest and favoritism toward business continued. Allegations included claims that some officials made up "hit lists" of politically unreliable agency employees who should be removed or disciplined. Critics charged that internal bickering in EPA stalled Superfund actions. Finally, on March 25th, the cleanup ended as the last of the controversial Reagan appointees departed.

The president announced he would appoint William Ruckelshaus, who led the agency from 1970 un-

After the resignation of Anne Burford, President Reagan asked William Ruckelshaus, EPA's first administrator, to take over the besieged agency.

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til 1973, as the new administrator. In May, Ruckelshaus received unanimous confirmation from the Senate with promises to clean up EPA and enforce environmental laws. He replaced the political appointees who had been swept out of office by the crisis with assistant administrators who had spent much of their careers in government. Ruckelshaus told the *New York Times* that "it is probably better if you can find people who are not subject to the charge" of being too close to industry. Ruckelshaus said he looked for government people "because I needed people I could put to work right away. That tended to preclude business people. My view is we don't have much time to do what we need to do." The selections met with approval from environmentalists. "The situation is much improved," said David J. Lennett, a lawyer for the Environmental Defense Fund.

The System Works—Or Does It?

Some reporters celebrated the scandal at EPA. An article by an assistant editor of the *Washington Post* was headlined "EPA Fiasco: The System Works!" Other journalists were not so sure. Haynes Johnson, a respected *Washington Post* writer and commentator, expressed some doubts about the system, especially about the role played by the news media. Johnson questioned whether the public was well served by the "circus atmosphere" and the "herd" reporting generated by the scandal. He wondered if serious issues had been illuminated or obscured by the media carnival.

On the working of the system, the *Washington Post* editor contended that President Reagan's environmental policies had been flawed from the beginning in the sense that they were not favored by a majority of Americans. Some members of Congress recognized this early in 1981 and repeatedly demanded that EPA officials testify during oversight hearings. Yet these pressures from the legislative branch had little effect on the executive branch. Finally, the president went too far by denying Congress access to information and forcing a collision with the legislative branch. Not even congressional Republicans could avoid the damage. As a result, the media circus took place, heads rolled at EPA, and Ruckelshaus—"Mr. Clean"—returned to head the agency. During his Senate confirmation hearings, the new administrator admitted that his predecessor had done a poor job and promised to clean up the agency. Thus the media, Congress, environmental interests, and the public gained an important point: government had to protect the environment. The system worked.

But did it really work? For all their excitement, the scandal and media show undermined the reputation of EPA and its career employees. Would a new administrator, however admired, be able to restore the agency's integrity and stature? Would Ruckelshaus receive necessary support from the president, the regulatory reformers, and James Watt? Was the furor at EPA enough to change the administration's environmental policies? Or would the Reagan program of regulatory relief undermine environmental protection? These questions remained unanswered.

The pressures on EPA and other agencies from the executive branch are great. Simultaneously, these agencies are answerable to the president, Congress, and the courts. When the three are not unified in their objectives, an agency can move with the relative ease of a mule being pushed at both ends by different masters.

A Chronology of Environmental Issues and the EPA

1964
Passage of the Wilderness Act.

1965
Passage of the Water Quality Act.

1967
Passage of the Air Quality Act.

1969
National Environmental Policy Act established, creating the Council on Environmental Quality.

1970
Passage of the Clean Air Act, amended in 1977.
Environmental Protection Agency (EPA) established.

1972
Passage of the Water Pollution Control Act, amended in 1977.

1974
Passage of the Safe Drinking Water Act, amended in 1977.

1976
Passage of the Resource Conservation and Recovery Act.

1977
Passage of the Surface Mining Control and Reclamation Act and the Toxic Substances Control Act.

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1978
Exposure of widespread illnesses in Love Canal, a neighborhood of Niagra Falls, New York, linked to a forgotten toxic waste dump under the community.

December 11, 1980
President Carter signs "Superfund" legislation, designed to organize and fund the clean up of toxic waste dump sites.

February 17, 1981
President Reagan orders federal agencies to review regulations that overly restrict business.

March 10, 1981
President Reagan proposes a 74 percent cut in the EPA budget. Congress resists.

June 12, 1981
EPA Administrator Ann Gorsuch Burford abolishes the EPA Office of Enforcement, shifting its duties to other offices.

September 24, 1981
President Reagan says he wants the Superfund budget reduced from $250 million to $176 million.

October 22, 1981
EPA releases interim list of 115 most important hazardous waste sites to be cleaned up under the Superfund.

February 25, 1982
EPA sets off controversy by suspending ban on dumping of hazardous liquid wastes in landfills. Reimposes the ban twenty days later.

July 16, 1982
EPA, under a court order, releases National Contingency Plan for carrying out the Superfund.

July 21, 1982
Five subcommittees of the House of Representatives begin joint oversight hearings of EPA. Conservatives call the hearings a "witch hunt" to embarras Anne Burford.

October 21, 1982
House Commerce Committee subpoenas EPA to deliver documents relating to three hazardous waste sites. EPA refuses, later invoking "executive privilege."

December 5, 1982
Flood waters in Times Beach, Missouri, spread the deadly chemical dioxin throughout the town. The Center for Disease Control advises residents not to return to their contaminated homes.

December 16, 1982
The House of Representatives votes to cite Ann Burford with contempt of Congress for not turning over documents.

December 20, 1982
EPA announces National Priorities List of 418 toxic waste sites to be cleaned up under the Superfund law. Experts estimate that thousands more sites still remain.

February 7, 1983
President Reagan fires Rita Lavelle, who had managed the Superfund program.

February 9, 1983
House Commerce Committee Chairman John Dingell announces he has evidence that the Reagan administration manipulated the Superfund cleanup program for political purposes.

March 1, 1983
Representative Dingell writes President Reagan, saying he has evidence of wrongdoing and criminal conduct at EPA.

March 2, 1983
President Reagan releases documents to Congress.

March 9, 1983
Anne Burford resigns.

March 21, 1983
Original EPA administrator William Ruckelshaus nominated to replace Burford.

March 25, 1983
Amidst charges of scandal, five top political appointees resign from EPA, including Deputy Administrator John Hernandez.

May 17, 1983
Senate confirms William Ruckelshaus as the new EPA administrator.

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3. The Congress

"I consider the people who constitute a society or nation as the source of all authority in that nation; as free to transact their common concerns by any agents they think proper...that all acts done by these agents under the authority of the nation are the acts of the nation."

—Thomas Jefferson

It is no accident that the Constitution devotes more than half of its words to the Congress, our legislative branch of government. The Founding Fathers intended the two houses of Congress, the House of Representatives and the Senate, to be the most important branch of the new government they were creating. In the Congress, elected representatives would translate the will of the people into the law of the land.

Over the years, however, many of the powers that were originally exclusive to Congress have been assumed by the executive branch. The president now is the initiator of much of the legislation that Congress acts upon, and has broad powers to involve the United States in armed conflict. Federal regulations adopted by the bureaucracy often have the force of law, and while the executive agencies were originally created by Congress, Congress often does not have much direct control over the regulations they make.

In the wake of the Watergate crisis, when President Nixon was forced to resign, many people believed that the president had grown too powerful at the expense of Congress. Congress, however, has found it difficult to assume a stronger leadership role. A body of 535 individuals is an inherently unwieldy institution, and the complexities of modern legislation make congressional leadership difficult.

This chapter examines some of the key questions concerning the legislative branch. Has the executive branch usurped powers that should belong to Congress? Is the Congress capable of assuming more of a leadership role? How are laws really made? These are questions that the articles of this chapter will help you answer.

In This Chapter

Congressional Leadership Positions
A look at the roles and reponsibilities of the leaders of the House of Representatives and the Senate.

The Committee System
A look at the committee system in Congress and the influential role played by committee chairmen.

Catherine Rudder
The Budget Process
The associate director of the American Political Science Association and former congressional staffer describes the federal budget process.

Bill Frenzel
The Job of a Congressman
A U.S. representative (R-Minn.) examines the responsibilities of a member of Congress.

Steve Schevick
Working on Capitol Hill: The Role of Congressional Staffers
A legislative assistant to Representative Charles E. Schumer (D-N.Y.) describes the work done by the 19,000 men and women who are the eyes, ears and hands of every senator and representative.

Elliott H. Levitas
Legislative Veto: A Question of Who Should Make the Laws
A Georgia congressman discusses the need for congressional oversight of the bureaucracy.

Case Study: Congress
The Superfund Bill
A study of how a complicated and expensive bill, affecting the health and pocketbooks of tens of thousands of Americans, traveled the bumpy road through Congress.

Words to Know

amendment
appropriation
bill
caucus
cloture
confirmation
constituency
filibuster
floor
hearing
markup
oversight
ratification
reconciliation
rider
seniority
swing votes
table

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Congressional Leadership Positions

THE HOUSE OF REPRESENTATIVES

The Speaker

The speaker of the House, presently Thomas P. O'Neill (D-Mass.), is the highest ranking figure in Congress. He serves as chief presiding officer of the House and is also the principal leader of his congressional party. The speaker is the third ranking public official and would serve as president if both the president and vice president were unable to take office.

The speaker, like all other members of the House of Representatives, must compete for re-election every two years. At the beginning of every Congress, each party elects its leader, who then competes with the leader of the other party for selection as speaker.

The speaker has many responsibilities and powers. Like all representatives, he has a responsibility to represent his constituents. But the speaker is also the leader of the majority party in Congress and may often have to put the interests of his party above those of his district. Traditionally, the speaker does not vote.

The speaker is most often seen in his role as the presiding officer of the House, the chief parliamentarian. In this capacity he must preside with impartiality.

Less known is his role as chief administrative officer of the House side of the Capitol, charged with overseeing all the House office buildings, grounds and other properties.

Finally, as the highest ranking officer of the Congress, the speaker is often called upon to represent the legislative branch on occasions of ceremony.

Control over legislative scheduling is almost exclusively a top leadership function—shared by the speaker and the majority leader working in consultation with the minority leadership. Such control is, of course, subject to the flow of legislation converging upon the leadership from 22 different directions—the standing committees of the House.

The speaker's powers include the appointment of House members to joint committees, select committees, commissions and conference committees. His authority also includes the power of recognition; the power to enforce the rules of courtesy; the power to sign all legislation and to pass on all points of order in the House.

The Majority and Minority Leaders

The majority and minority leaders are the chief spokespersons for their parties when the House is in session. They are elected at the beginning of each Congress, every two years, by their party caucus.

As leaders of the floor debate (where the House meets as a whole), each can be found at desks near the front on either side of the aisle. The Democrats are traditionally seated on the left and the Republicans on the right.

Although the majority leader, James Wright (D-Tex.), is the chief spokesperson for his party on the floor, the speaker is the actual head of the party and works closely with the majority leader. Together they oversee the development and implementation of party strategy and control the flow of legislation in close cooperation with committee chairmen.

The minority leader, Robert Michel (R-Ill.), also oversees his party's congressional strategy. Because the current president is Republican, he has the additional role of acting as a liaison between Republican representatives and the White House and to the Republican-controlled Senate. He has overall responsibility for the coordination of Republican activities in committees of the House.

Both party leaders often work together to schedule pressing legislation. Their duties include remaining on the House floor while the House is in session, making themselves available to members seeking information about scheduling and party positions on voting. They also make the motions, both routine and special, that set the legislative pace of the House.

The Whips

At the beginning of each Congress, each party selects someone to serve as whip. The Democratic whip is Thomas Foley (D-Wash.) and the Republican whip is Trent Lott (R-Miss.).

The phrase "whip" comes from the British phrase "whipper-in," a huntsman whose job is to keep the hounds from straying from the field during a fox hunt. In Congress the whips act as assistant party leaders and play a major role in keeping party members informed of the legislative schedule and the party position, if there is one, on controversial issues.

Like the "whipper-in," the whip tries to keep members from straying on important party issues. The whips try to measure support for important issues before the item comes to a vote. They also take the place of the party leader on the floor if he cannot be there or they appoint another member to fill that role.

The office of the whip is a relatively new one in

American politics, having been created at the beginning of the century. The title "whip" also refers to the written document put out by the party leadership informing members of upcoming votes, party positions on controversial issues and other important party matters. "Whip notices" have become a standard routine of the congressional whip.

THE SENATE

Majority and Minority Leaders

Like their counterparts in the House, the party floor leaders of the Senate are elected by a majority vote of fellow senators of their party. The majority leader is Republican Howard Baker of Tennessee, and the minority leader is Democrat Robert Byrd of West Virginia.

The power of Senate leaders (or House leaders, for that matter) is limited by the fact that they serve at the will of their party. Although they traditionally serve two-year terms, their party could decide to elect a new leader at any time. As a result the leaders cannot lead with an iron fist—there is no patronage; no power to discipline; no authority to fire senators like a president can fire members of his administration. Former president and Senate majority leader Lyndon Johnson said that the only powers available to a congressional leader is the power of persuasion. "A good leader should not only know more about the workings of the committee and how the members arrived at the content of the bill as finally recommended, but he must also know the problems of each individual state and the temperament of each individual senator."

The role of the respective party leaders is an integral part of the effective functioning of the Senate. The leader must keep briefed and informed on national and international problems in addition to pending legislative matters. On the floor of the Senate, he is charged by his party members to deal with all procedural questions in consultation with them and his party's policymaking bodies. In turn, he must keep his membership currently advised as to proposed action on pending measures. The party leaders also have the responsibility of scheduling legislation and leading the debate on behalf of their party.

The Whips

The positions of whips in the Senate are nearly identical to those in the House. What differences there may be are determined by the role set out for them by their party leader or by themselves. The whips send out "whip notices," notifying senators of pending legislation and the upcoming schedule; they "count noses" of supporters and dissenters on controversial issues; and they assist or take over for the party leader on the Senate floor. The Democratic whip is Alan Cranston of California and the Republican whip is Ted Stevens of Alaska.

President of the Senate

The president of the Senate is the parliamentary leader of the Senate and is the only official duty proscribed for the vice president in the Constitution. When the vice president is present, he presides over the Senate debate. He only votes in order to break a tie.

President Pro Tempore

The president pro tempore (or pro tem for short) acts as the parliamentary leader of the Senate when the vice president is absent. "Pro tempore" is a Latin term meaning "for the time being." Unlike the president of the Senate, the president pro tem can appoint another senator to preside in his absence.

The tenure of the president pro tem ends upon the expiration of his term as senator. He may, of course, resign, or the Senate may choose to elect someone in his place. The usual practice has been to elect a candidate of the majority party. For the most part, the parties have nominated men with long senatorial careers. In fact since the 1950s, the Senate has elected the most senior senator of the majority party. The current president pro tem is Strom Thurmond (R-S.C.).

The Committee System

Questions and Answers

What is a committee?

In the U.S. Congress, committees are bodies that have been granted jurisdiction to prepare legislation and to conduct investigations in a particular policy area. Both the House of Representatives and the Senate have their own committees.

What is a subcommittee?

A subcommittee is a subdivision of a committee, with an even more specialized jurisdiction. In the accompanying table, the number of subcommittees of each committee is listed in parentheses.

Are there an equal number of Democrats and Republicans on each committee?

No, membership on committees is not split 50-50 between Democrats and Republicans. In the 98th Congress, Senate committees have more Republicans than Democrats, while the reverse is true in the House. This reflects the Republican majority in the Senate, and the Democratic majority in the House.

What are the powers of the committees?

Except for exceptional or emergency cases, committees must pass all bills before they can be voted on by the full House or Senate. This gives committees the power to amend bills or to propose alternative ones.

A second important power of committees is "oversight," to ensure that the laws passed by Congress are properly enforced and carried out. This includes investigations of the executive branch, of private businesses and organizations subject to federal laws.

Are there different kinds of committees?

Yes, there are three major classifications; standing, select and joint committees.

A *standing committee* is a permanent committee which has jurisdiction over a specific policy area. There are 22 standing committees in the House, 15 in the Senate; see accompanying table for the titles.

A *select* or *special committee* is established for a special purpose and a limited period of time. An example is the Senate Select Committee on Presidential Campaign Activities, commonly known as the Senate Watergate Committee, which was established specifically to conduct hearings on Watergate in 1973.

A *joint committee* has members from both the House and the Senate. These are primarily investigative in nature and do not have the same functions in considering actual legislation as do standing committees. They are also listed in the table.

How are the committee chairmen selected?

Committee chairmen are always members of the majority party; presently Senate committee chairmen are Republican and House committee chairmen are Democrats. Until 1974, chairmen had been selected according to the "seniority system," which meant that the members of each committee with the most years in Congress automatically became chairmen. Reforms passed in 1974 opened up the chairmanship so that seniority was not the only factor.

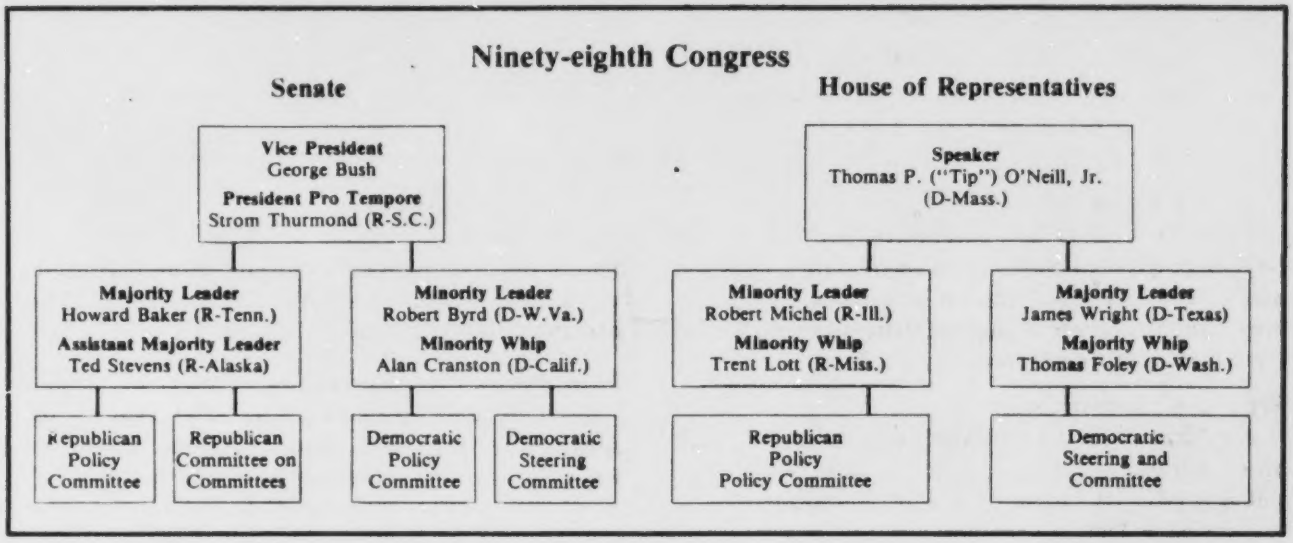
What are the powers of chairmen?

Committee chairmen have vast powers to control legislation. They decide which bills are to be considered by the committee; whether or not hearings should be held; and in most cases, they select the chairmen of the subcommittees. Chairmen are also frequently the floor managers of a bill, after it has been passed by the committee and is to be considered by the full House. If the bill needs to go to conference committee, the committee chairman is a likely appointee. Finally, they have a great deal of control over the hiring of staff for the committee.

What is a conference committee?

Many times the House and the Senate will pass different versions of a bill. Before a bill can be sent to the president, the same version must be agreed upon by both the House and the Senate. It is the conference committee that must work out the compromises necessary to eliminate the differences.

A very large percentage of bills go to conference committees. These bodies have often been referred to as "the third house of Congress," because in working out the differences they will frequently make significant amendments or deletions. After a bill is passed by the conference committee, it goes back to both the House and the Senate for another vote. Both chambers must vote "yea" for it to be sent to the president.



Know the Leaders of Congress

How often have you watched or listened to the news when the commentator has said, "President Reagan met today with leaders of Congress to discuss upcoming legislation..." Who are these official leaders of Congress? Many senators and representatives perform unofficial leadership roles on different issues, but certain members of Congress are selected by their colleagues to serve in official leadership positions.

These leaders of Congress are very important to the legislative process. Below is a listing of the main leadership roles in Congress and a partial listing of the roles and responsibilities that go with them. For each leadership role, first write in the name of the current member of Congress who holds the position. Use the chart below. Then, match each postion to the appropriate power and responsibility.

House of Representatives

___ A. Speaker of the House _____

___ B. Majority Leader _____

___ C. Minority Leader _____

___ D. Majority Whip _____

___ E. Minority Whip _____

Senate

___ F. President of the Senate _____

___ G. President Pro Tempore _____

___ H. Majority Leader _____

___ I. Minority Leader _____

___ J. Assistant Majority Leader* _____

___ K. Minority Whip _____

*Formerly Majority Whip

1. Acts as official presiding officer of the Senate according to the Constitution. He or she can only vote in case of a tie.

2. Works with the Speaker of the House on legislative strategy.

3. Acts as chief spokesperson of his or her party, when that party is in the minority. Also is the leader of the minority party in the Senate.

4. Serves as "lieutenant" to the House Majority Leader. His or her job is to persuade members of the majority party to vote with the party on key issues.

5. Exercises the greatest influence over committee assignments in the Senate; also serves as the chief legislative strategist for the majority party in the Senate.

6. Serves as presiding officer of the House, acts as chief legislative strategist, schedules bills for debate on House floor and exercises greatest influence over committee assignments.

7. Acts as "lieutenant" to House minority leader. Responsible for persuading members of the minority party to vote together on key issues.

8. Presides over the Senate in the absence of the vice president of the United States. He or she is the most senior member of the Senate.

9. Lines up the votes of members of the minority party in the Senate to support the policies of the minority party. Acts as "lieutenant" to the minority leader.

10. Lines up votes in favor of bills that the Senate majority leader and the majority party support. Acts as "lieutenant" to the majority leader.

11. Serves as leader of the opposition party in the House.

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The Budget Process

Catherine Rudder

This article focuses on one of the most important parts of the policymaking process, in which both the legislative and executive branches play key roles—the formulation of the federal budget. Dr. Rudder explains this process, beginning with the president's proposals and concluding with the passing of the second budget resolution by Congress. Dr. Rudder is presently the associate director of the American Political Science Association, the director of the Congressional Fellowship Program and has taught political science at the University of Georgia. She has also conducted research and written extensively on the C ngress. As you read the article consider what effects the Republican administration and Senate have had on the budget process.

In 1978, 1,300 Atlanta workers funded through the Comprehensive Employment Training Act (CETA) lost their jobs. In Philadelphia the Right-to-Read program for illiterate adults was shut down due to lack of funds. In Seattle thousands of aerospace workers are out of jobs they would have had if President Carter and Congress had agreed that the B-1 bomber was needed for national defense.

These communities and every other community throughout the country feel the profound effects of federal budget decisions. Whether you can afford to go to college, live in the suburbs or city, how much money you will make, even how many children you will have—all of these personal matters are influenced by federal budget decisions.

The Federal Budget Process

Why *does* the government tax some people more than others? Why *does* it spend money on one program and cut another? The answers to these questions are found in the process which results in the federal budget. In simplest terms the federal budget is the government's plan for taxing (raising revenues) and spending (planning expenditures). As President Carter put it, the budget is "a full statement of priorities, policies and proposals for meeting national needs." It matches the federal government's limited resources to its repsonsibility "to meet the actual needs of the nation and its people."

The workers in Atlanta and Seattle, whose needs were not met when they lost their jobs, blamed the federal government for their plight—as if the government was one person or even one institution. However, if they understood the budget process, they would know that one no person decided that some CETA jobs should be temporary and no one person, not even the president, halted production of the B-1 bomber.

The truth of the matter is that taxing and spending decisions are made by many people representing many different interests over the course of a year.

But, who finally decides how a department or program will come out in the budget? Who decides how much the American taxpayers will pay for these programs? The simplest answer is: the president and Congress decide together. However, the procedure is a little more complicated than that.

Many people mistakenly believe that the executive branch of government is led and controlled by the president and that everyone in the executive branch is working together to assist the president in his programs. But actually each cabinet officer must fight for his or her part of the budget each year, with other cabinet officers and with the presidentially appointed Office of Management and Budget (OMB). The OMB reviews and alters the budget requests to agree with the president's preference.

The secretary of labor, for example, might have fought for more money to keep the CETA workers in Atlanta from losing their federally funded jobs. At the same time, the secretary of housing and urban development (HUD) might have argued that a program to

Budget/Federal Budget

budget:
1. an estimate, often itemized, of expected income and expense.
2. a plan of operations based on such an estimate.
3. an itemized allotment of funds for a given period

federal budget:
1. an estimate by the federal government of where its money will come from *(revenues)* and how it will be spent *(expenditures)*.
2. full statement of policies, priorities, and proposals for matching the limited resources of the federal government to the critical needs of the nation and its people.
3. plan of operations in which Congress and the president agree to specific levels of funds, and the agencies agree to spend them accordingly.

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rehabilitate low and moderate-income housing would have had a more lasting effect and, therefore, be more deserving than Labor's CETA program. At this point, the secretary of defense might speak up for the B-1 bomber: After all, what good are jobs and housing if we cannot defend ourselves from foreign attack?

In the meantime, bureau chiefs and commissioners *within* agencies fight for their programs. Within the Department of Health and Human Services (HHS), the director of the National Institutes of Health may want to see more money for cancer research, while the commissioner for family assistance may feel that aid to poverty stricken families would be the highest priority. Even with an annual budget of more than $600 billion, there is not enough money to go around, and choices have to be made.

Finally, the president, with the help of the OMB, makes these initial decisions that make up the presidential budget, which announces the president's priorities for the nation.

The presidential budget is really only a set of budget requests which the president asks Congress to consider. In fact, the president is restricted because three-fourths of the federal budget is predetermined. Such commitments as social security payments, interest on the national debt and money promised to state and local governments have been made for the president in previous years. When talking about budget cuts and balanced budgets, it is important to remember how much of the budget is considered uncontrollable or obligated expenditures.

Even though some items in the president's budget are not personal choices, the president has the upper hand over Congress at this point because the presidential budget determines the choices which the House of Representatives and the Senate will consider.

Congress Considers the Budget

The president is required by law to submit budget requests to Congress every January. Congress considers and acts on these requests from January to September 30. This timetable was established by the Budget Control and Impoundment Act, passed by Congress in 1974. This new law reformed and structured the process by which Congress considers the president's budget requests. Traditionally, Congress has acted on individual pieces of legislation without regard to the size of the total budget. The Budget Control and Impoundment Act changed this process by requiring Congress to prepare its own overall budget guidelines, as well as targets for major program areas. To support this new process, the act established the House and Senate budget committees to have primary responsibility for the overall process; and the Congressional Budget Office to provide Congress with its own source of information and expertise.

The president and Congress must complete work on the federal budget before October 1 because that is when the *fiscal year* for the federal government begins. For the federal government, fiscal year 1983 (FY 1983) began on October 1, 1982 and ends on September 30, 1983.

The Budget Process

Executive Branch Agencies
Every agency and department proposes its own budget for its internal operation and its programs.

Office of Management and Budget (OMB)
OMB is the organization within the Executive Office of the President that reviews each budget. OMB frequently makes a recommendation to the president for less money than was requested by the agency.

The President
The president makes the final decisions on how much money for each individual agency and how much for the total budget. Important factors for the president are the recommendations of OMB, his own policy priorities and goals, and the state of the economy.

Congress: Stage One—Authorization
In late January, the president sends his budget proposals to Congress. These are broken down into policy area (education, defense, health care, etc.) and considered by the committees of both the House and Senate. Bills are passed by both houses, which *authorize* money.

Congress: Stage Two—Appropriations
The authorization bills establish the maximum amounts of money that can be given out. But it takes another bill, called an *appropriations* bill, to actually give the money. Using the authorization bills as guidance, the House and Senate appropriations committees pass appropriations bills. These also must be approved by the full House and Senate.

The President
After going through a conference committee, the appropriations bills are sent to the president. He may sign or veto them. If he vetoes a bill it goes back to Congress for another vote. To override the veto, there must be a two-thirds majority in both houses.

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Authorizing Legislation

Congress considers spending requests in two different stages. In the first stage, which takes place in the spring and early summer, congressional committees and then the House and Senate consider the actual content of federal programs. In the CETA jobs program, for example, it has to be decided what types of jobs would be funded, who would be eligible to apply for the jobs and how the program would be administered. These first decisions come in the form of *authorizing legislation,* which is legislation describing the program's content and setting the maximum appropriation Congress may allot to those programs. The funding level is frequently less then the amount authorized.

Under the 1974 act's provisions, by May 15th the House and Senate must agree on the first budget resolution. This sets spending targets, expected revenue levels and the budget deficit (that is, the amount by which spending exceeds tax revenues) for the coming fiscal year. While these targets are not legally binding on Congress, they do provide guidelines as individual taxing and spending decisions are made through the summer. Also the setting of the target requires Congress to think in terms of the total budget and its effect on the economy. Until the 1974 act, Congress never explicitly voted on the size of the deficit or considered a total that should be spent by the federal government. The 1974 act's structure gives Congress the opportunity to exercise fiscal responsibility and restraint and to determine its own priorities.

Appropriations Legislation

At this point it becomes clear that money lies at the heart of politics and the political system. *Appropriations legislation* determines who gets what—which programs will be funded and which ones will not.

These decisions are made in a highly charged and partisan atmosphere. People and groups who have interests in various programs try to convince the House and Senate appropriations subcommittees and other members of Congress that their appropriations should receive an increase in funding over last year.

The strength of these arguments, the political philosophy of individual members and the number of constituents affected and paying attention back home all determine how a representative or senator will respond to pleas for more appropriations.

It would be a mistake to think that while Congress considers, the president, like Nero fiddles. On the contrary, the president, with the aid of the OMB and the Office of the White House Liaison, *lobbies* in Congress to convince representatives and senators to go along with the president's budget requests. The president, his top aides and cabinet secretaries and undersecretaries testify at committee hearings on behalf of their budgets. They also contact members of Congress and their staffs and work with committee chairmen and congressional party leaders to try to get the president's budget accepted by Congress.

When Congress passes an appropriations bill, the president has one more chance to influence the outcome. He may sign the bill, not sign it (in which case it becomes law anyway) or veto it. To override a presidential veto Congress must muster a two-thirds majority in both the House and Senate. If Congress fails to override, the House and Senate must come up with an alternative appropriations bill more acceptable to the president. To avoid the threat of a veto, Congress frequently combines a large number of appropriations into one bill, called an omnibus appropriations bill. Rarely does a president veto an omnibus appropriations bill. Such large legislative packages usually include some items the president wants and some the president does not want. But there is no picking and choosing. It is all or nothing, and usually the president selects all rather than nothing. At this point in the process, Congress obviously has the advantage.

Still, if the president is a member of the same political party as the majority of the members of Congress, the appropriations bills are likely to come fairly close to what was first requested. For example, President Reagan had a much more difficult time enacting his budget requests than President Carter had simply because Reagan, a Republican, had to work with a Democratic Congress.

If Congress is on time with its appropriations bills, the budget process will be completed before the beginning of the new fiscal year on October 1. The winners and losers are, in effect, announced as the president signs the appropriations bills. However, the budget process is not completed until Congress passes the second budget resolution, which is similar to the first resolution passed in May, with the crucial difference that this time the taxing and spending figures are binding on the Congress. The second budget resolution sets the budget and Congress *must* adhere to it. Members of Congress cannot decide to spend more unless an amended third budget resolution is passed.

The money appropriated by Congress in fiscal year 1982 came from taxpayers—individuals and profitmaking businesses—primarily in the form of income and payroll taxes.

How these taxes are spent depends, as this examination of federal budgeting reveals, on the amount of attention and interest given to the politics of federal spending by many individuals and groups, in addition to the president and Congress.

How A Bill Becomes A Law

Stages	Commentary
Bill Introduced and Assigned to Committee Any member may introduce a bill. This person is called the sponsor. The bill is given a number and assigned by the parliamentarian and presiding officer to the appropriate standing committee. The committee chairman then assigns the bill to a subcommittee.	*If the President wants a bill introduced, he must get a Member to be its sponsor. In all cases more than one Member may co-sponsor a bill. In the House it is usually the Speaker, and in the Senate the president pro tempore, who assign bills to committees.*
Subcommittee Action Hearings are scheduled, in which different witnesses testify on the bill and answer questions from subcommittee members. Next, markup sessions are held, in which the bill can be rewritten. Then a vote is taken of all subcommittee members on the bill and on any proposed amendments.	*Witnesses at hearings include executive branch officials, other members of Congress, lobbyists and other concerned citizens. The subcommittee staff of lawyers and other professional aides play a key role in hearings and markup. The subcommittee stage is important because it is the first opportunity for amendments to be added, or for the bill to be defeated.*
Committee Action The full committee may hold additional hearings, markup, and debate over amendments to the original bill. Or it may move immediately to vote. If there are many amendments, the committee may introduce a new bill, called a clean bill. If the bill passes, a report must be written which includes an explanation of the bill as well as minority views.	*The committee stage is a crucial part of the process. Lobbyists on all sides are able to concentrate on the 15 or 30 or 40 committee members, rather than all the 100 senators or or 435 representatives. Committee chairmen are very powerful figures, because they can frequently assure the defeat of bills they oppose. This is why reformists have attacked the seniority system. If the bill passes, the committee chairman usually will be its Floor manager.*
Rules Committee (only in the House) In the House every bill must go to the Rules Committee for a rule, before proceeding to the Floor. The Rules Committee determines how much time will be allowed for debate, and whether or not any further amendments will be allowed to be proposed.	*There is no Rules Committee in the Senate. Because every bill in the House must pass through the Rules Committee, it is a very powerful body. The kind of rule given a bill can have a major impact on its chances of passing. This committee can also block or delay bills.*
Floor Action Once a bill is on the Floor, all members can participate in its consideration. In the Senate debate is unlimited, unless cloture is voted, and any amendments must be voted on. In the House, debate is limited by the Rules Committee and there can be stricter rules regarding acceptable amendments. In both chambers amendments can be voted on separately. Then the whole bill is put to a vote.	*The Floor manager is in charge of the bill and works with the Majority Leader and Whips to get support from other members. In addition to opposition to a bill, there are many parliamentary obstacles to be overcome before a bill can become law. In the Senate opponents may resort to unlimited debate, known as filibuster, to block a vote. In the House debate is more limited but there are other parliamentary tactics. Motions to recommit or table a bill must be defeated.*
Conference Committee If the House and Senate pass different versions of the same bill, a conference is called to work out the differences. For more on conference committees read *The Committee System: Q & A* in this chapter.	**Sent to the President** If both the House and Senate pass the same version of the bill, it is sent to the president. If he takes no action within 10 days, it becomes law. If he vetoes the bill, it is returned to Congress for another vote. If two-thirds of the members of both chambers vote for it, it becomes law over the president's veto. If not, it is defeated.

At any stage of the legislative process a bill can be defeated. When this occurs the bill must be reintroduced and go through the process again.

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The Job of a Congressman

Bill Frenzel

Before one can evaluate the performance of a member of Congress, it is necessary to know what the job entails. Representative Frenzel (R-Minn.) in this article describes the many functions that a United States representative or senator performs. While the preceding articles of this chapter focus on Congress as an institution, Representative Frenzel here discusses the job of the 535 members of Congress.

There is no "typical" handling of the job of congressman. Each of us goes about his or her job in a different way. Among the 435 members of the House of Representatives there are generalists and specialists, regionalists and nationalists, those who push causes and those who are good negotiators. Great orators are heavy on speechmaking, legislative craftsmen work silently in committees. Because the demands of the job are almost infinite, no one can do it all. At best, each member concentrates on those things that seem most important, or that he or she does best.

For convenient analysis, the job can be broken into functions. There could be any number of subdivisions, but for simplicity's sake, let's take these five: (1) legislation; (2) constituent service; (3) communication; (4) administration; (5) miscellaneous.

Legislating: Congressman as Lawmaker

The congressman's duties as a lawmaker span the whole process of how a bill becomes a law. They begin with reading and research on the issues, include polling of constituents to discover their preferences, and climax in his work on committees and his votes on the floor of the House. Legislative duties also include floor debate, speech writing, knowledge of parliamentary procedure and service on conference committees or other special assignments made by the speaker of the House, the majority leader, the minority leader or even the president of the United States.

Most members of Congress assign top priority to legislative duties. In the House, particularly, there is a heavy emphasis on committee and subcommittee work. Each congressman usually serves on two committees and within each of those he is also a member of several subcommittees. In this capacity, he participates in committee and subcommittee hearings, in which testimony is heard from representatives of different groups, as well as interested individual citizens. These hearings provide a congressman with a more informed and broader perspective on the impact of a bill under consideration. With this information he may offer amendments or alternatives to the original bill, may vote for the original or may vote against it during the committee sessions. Congressmen whose committee attendance is regular and who "do their homework" are effective committee members and are thought by their peers to be good congressmen.

The climax of the legislative process is the floor debate in the House (or Senate) chamber. Most members have pretty well decided how to vote on a bill prior to floor debate on the basis of committee hearings, regional or group interests of constituents, conversations with lobbyists or other experts on the issue or persuasion by fellow congressmen or party leaders. Only rarely are members' votes affected by persuasive oratory during floor debate.

During this whole process, political considerations have an importance not always discussed. While they may be outweighed by other concerns, they are nevertheless always present. If the congressman is a member of the political party which occupies the White House, he has some responsibility for helping to pass the president's programs. However, this does not mean strict and unswerving cooperation between a president and his political party in Congress. Competition between the president and the Congress has been traditional and has its roots in the Constitution.

"There were 226 roll call votes in the Senate last year. As the clerk called our names, those of us on the Senate floor had to answer whether 'aye' or 'no.' Many times we wished an issue had never arisen. Many times the issue itself was not clear. Many times we felt that our truest answer was neither 'aye' nor 'no,' but 'maybe.' Still we could not stall by repeating the truth that there was much to be said on both sides. In the Senate, when our names are called, the time for objectivity ends. We must answer with the categorical 'aye' or 'no.' "

former senator Paul Douglas

If a congressman is a member of the political party which is a minority in the House, he has the duty of modifying or trying to defeat the majority party program when he disagrees with it. If it is worthy, he has the responsibility to support it. The minority always will seek to become the majority and will often offer alternatives to majority programs as a demonstration of what it would do if it were in power.

Representatives may also be active in movements or causes that are bipartisan or nonpartisan such as environmental groups, the women's movement or fringe liberal and conservative groups. Senators are more well-known and are consulted more often than congressmen, but this is not always the case.

Committee chairmanships are another extremely important duty. Since committees are at the heart of the legislative process, being a chairman bestows a great deal of authority and responsibility. Chairmen have central responsibility for managing the committee staff. They also have a dominant voice in the committee stage of the legislative process and can significantly influence the fate and content of a bill.

The congressman's day begins early and ends late. The job is never done, because there is more of it than any single human can do. Members, therefore, pick those aspects that seem most important to them or their constituents, or they select tasks that they perform well. Every member makes conscious selections knowing many functions have to be left undone.

Constituent Service

This is the pesty part of the job. In many Scandinavian countries the national legislatures appoint a special commissioner called an "ombudsman" to hear and investigate problems or complaints by private citizens against the government and its agencies. In the United States there is no such government official, so ombudsmen-type functions have fallen upon congressmen as the representatives of the people.

Every congressional office has at least one person, usually called a "caseworker," who handles the problems of constituents who have been rebuffed, frustrated or harassed by the federal bureaucracy. In active House offices or larger Senate offices, the casework group may be a large team. The problems they handle include finding lost Social Security checks, expediting military leaves in time of family emergency, securing passports and visas, and helping people determine their eligibility for federal assistance programs.

Some offices take particular pride in this kind of work, and many congressmen make their local reputations on the basis of being especially sensitive to, or having a special capability to solve, these individual problems. Members hold office hours throughout their districts, some in mobile offices, in an attempt to respond to this perceived constituent need. The caseload varies, but every office has plenty of it.

Communicating With the People

By far the single most important communications function is responding to letters, phone calls, petitions and personal requests. Each office's mail varies, but it is not unusual for a congressman to receive as many as 2,000 letters per month. Many ask his position on a particular issue; even more urge him to vote a certain way. As a conscientious representative he must answer all such inquiries. Since the advent of automatic typewriters and, more recently, computers, a congressman can now write to people who are known to be interested in a particular subject (because of their occupation, group affiliation, place of residence or other factors) even if they have never written to the congressman. These unsolicited letters are mailed in an effort to inform as many people as possible of congressional activities in specific issue areas.

There are also a variety of means of communicating with constituents other than personal letters. The most familiar is the congressional newsletter, written periodically by nearly all members to inform their constituents of their activities. Press releases are another important aspect of communications, especially for congressmen whose districts lie outside of major media areas. Many offices have staff aides designated as "press assistants," who specialize in working with the print and electronic media. Radio tapes, local television appearances, special telephone connections to local schools or groups and informational questionnaires are also employed to communicate with constituents.

A congressman will return home to the district on weekends and during recesses. The frequency of such trips obviously depends on where a district is located in relation to Washington, D.C. Such trips allow a congressman to report directly to people as well as to find out directly what they are thinking. Speechmaking and meetings with constituents dominate a congressman's schedule when he or she is back in the district.

Administering an Office Staff

Few members of Congress would want to be considered administrators, but it would be impossible for any of us to fulfill the many functions already described without an effective staff. In reality, every congressman has two staffs—one in the district and one in Washington. The total of these two offices can be up to 20 staff members; senators are permitted larger staffs because of their larger constituencies.

Administering this staff can be difficult and time-consuming. Staff must be recruited, trained, motivated and evaluated according to their different job responsibilities. Frequent staff meetings may be required both in Washington and in the local district. If a congressman is a committee or subcommittee chairman, or a ranking minority member, he must also manage committee staffs. Many times our administrative functions seem to impinge on the nobler duties.

Other Duties

My division into legislative, constituent service, communication and administrative functions is arbitrary and obscures other important duties. For instance, it ignores political responsibilities. Each member has a role to play within his political party on many levels. Each congressman belongs to the congressional caucus of his party, which means that he participates in decisions involving the party in Congress such as choosing the leadership and setting a party program. Congressmen are also looked to as leaders of their party at the local and state levels, and play a leading role at party conventions on all levels. As national figures they are often asked to meet with or address political groups from areas other than their own districts.

The Congress and Its Committees*

U.S. SENATE

Standing Committees
Agriculture, Nutrition and Forestry (8)
Appropriations (13)
Armed Services (6)
Banking, Housing and Urban Affairs (7)
Budget
Commerce, Science and Transportation (7)
Energy and Natural Resources (6)
Environment and Public Works (6)
Finance (9)
Foreign Relations (7)
Government Affairs (8)
Judiciary (9)
Labor and Human Resources (7)
Rules and Administration
Veterans Affairs

Select or Special Committees
Aging
Ethics
Indian Affairs
Intelligence (4)
Small Business (8)

Joint Committees
Economic (5)
Library
Printing
Taxation

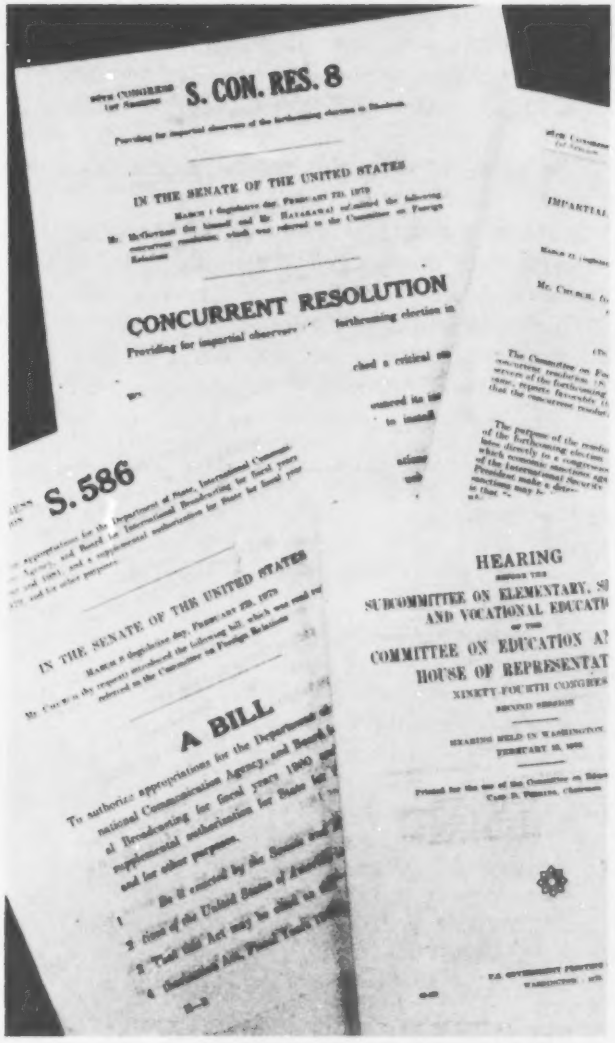
U.S. HOUSE OF REPRESENTATIVES

Standing Committees
Agriculture (8)
Appropriations (7)
Armed Services (7)
Banking, Finance and Urban Affairs (8)
Budget
District of Columbia (4)
Education and Labor (8)
Energy and Commerce (6)
Government Operations (7)
House Administration (7)
Interior and Insular Affairs (6)
Interstate and Foreign Commerce (6)
Judiciary (7)
Merchant Marine and Fisheries (5)
Post Office and Civil Service (7)
Public Works and Transportation (6)
Rules (2)
Science and Technology (7)
Small Business (6)
Standards of Official Conduct
Veterans' Affairs (5)
Ways and Means (6)

Select Committees
Aging (4)
Committee on Committees
Ethics
Intelligence (3)
Narcotics Abuse and Control
Outer Continental Shelf

Joint Committees
(same as above listing under U.S. Senate)

** For each committee the number of subcommittees is indicated in parentheses.*



TIPS ON WRITING YOUR SENATOR OR REPRESENTATIVE

- How to address your letter:

  The Honorable John Smith
  United States Senate
  Washington, D.C. 20510

  Dear Senator Smith:

  The Honorable Mary Smith
  United States House of Representatives
  Washington, D. C. 20515

  Dear Representative Smith:

- Why write your representative or senator?

  a. State your position on an issue or bill being considered by Congress;
  b. Ask his/her position on an issue or bill;
  c. General inquiry about his/her votes and other activities;
  d. Personal problem or question with which the office might be able to assist you.

- If possible, identify by number the bill which concerns you. Be brief and be sure to explain why you are concerned with this issue or bill.

- Present your views rationally. Disagree without being disagreeable. Threatening or impolite letters have much less effect than do well reasoned and sincere arguments.

- Time your letter so that it reaches your representative or senator before a vote comes up to the Floor.

- If you are concerned about a particular issue write also to the chairman and the members of the appropriate committee.

- Ask for a response and include your return address.

- Personal letters are more influential than form letters.

- If your letter concerns a personal or family problem, follow it up with a call to your representative's or senator's office.

- Keep in mind that in most cases your letter will be read and answered by an aide to the representative or senator. Some offices now use computers to answer their mail from constituents. A senator or representative receives thousands of letters each month and cannot personally respond to each.

Working on Capitol Hill: The Role of Congressional Staffers

Steve Schevick

Steve Schevick is the legislative assistant for banking and housing to Representative Charles E. Schumer (D-N.Y.). He was formerly with the congressional liaison office at the Department of Housing and Urban Development. In the following article Mr. Schevick discusses the many jobs performed by those who work for senators and representatives.

There are 535 elected officials on Capitol Hill—and 19,000 staff people (12,000 in the House of Representatives and 7,000 in the Senate). Staff people are everywhere. In the hallways, they are the ones scurrying from place to place at twice the speed of tourists. In committee hearings, they are the ones lined up along the back and side walls, kneeling beside the representatives or senators or whispering into their ears. Despite the fact that they seem to be everywhere, it is very difficult for the casual observer to describe exactly what they do.

Simply stated, staffs exist to serve the representatives who hire them. Therefore, to understand the role of a staff worker, it is helpful to understand the wide variety of responsibilities members of Congress have. On any given day a member of Congress may be required to debate and vote on issues as different as American policy in the Middle East and local sewage treatment funding. He or she may be required to vote on amendments that seem to have little impact on the overall shape of a piece of legislation, but that may make a substantial difference to his or her community. Legislative action on the House floor may be concurrent with action in one of the member's committees, which deal with issues about which the well-prepared member has specialized interest and depth of knowledge. There are party caucuses to attend, mail to read and sign (those letters written by staff members), issues to study, newsletters to prepare, lobbyists and experts with whom to discuss topics of interest and, of course, CLOSE UP students to meet. If legislation alone could lengthen a day by a few hours it would pass unanimously; but the days are set by the laws of nature, not the laws of men. It is the combination of responsibilities and severe time constraints that creates a vital role for congressional staff members.

There are two basic kinds of staff people, personal staff and committee staff. Briefly, personal staff work more closely with a member on his or her personal legislative interests, and on tasks that are of the greatest concern to the member's constituents. Committee staff, on the other hand, are almost strictly concerned with legislative issues within the jurisdiction of the committee for which they work. They are not always working on a specific piece of legislation, nor does every issue that arises necessarily lead to a legislative proposal.

What, specifically, are the duties of a representative's personal staff? A typical congressional office has seven to nine paid employees:

- A receptionist, who answers the phones, opens and distributes the mail (3 deliveries/about 30 lbs. a day) to the staff, greets visitors and fills constituents' requests for White House tour tickets, governmental publications and flags that have been flown over the Capitol.
- A computer operator, who keeps computer files of every letter written to and answered by the member (filed by geographic area and interest), and generates special mailings to constituents with common interests,

Clarence Bishop, administrative assistant to Representative Parren Mitchell (D-Md.), studies legislative correspondence.

keeping them informed about developments on these issues.

- An office manager/appointments secretary, who keeps the office well stocked with supplies, pays the bills (out of the office allowance granted to each member), keeps the office books, schedules appointments for the member and makes flight reservations.
- One or more legislative correspondents, answering constituent letters on just about every topic imaginable. This task frequently entails background research and a discussion with other legislative staff members, the administrative assistant and the member to develop a position and formulate a response to the constituent. On important or recurring issues, a member of Congress will receive a large number of letters that are nearly identical—opposing a recent tax bill, for example. It is the legislative correspondent's job to write a standard response, which is then approved by the member and programmed into the computer. Standard responses save staff members valuable time and enable members of Congress to respond to their constituents within a day or two of receiving a letter. A typical congressional office has more than 200 standard responses.
- Two or more legislative assistants, who act as the eyes, ears and frequently the voice of the member of Congress on the substantive issues that face Congress. The legislative assistants are assigned broad issue areas, such as "housing," "health" or "defense." The legislative assistants view these issues from two perspectives: one is a national perspective—how they fit into national policy and address nationwide problems; the other is a local perspective—how they affect the member's state or congressional district. A member's position on any given issue will depend on the balance between national and local interests. Although members generally have an opinion on the issues at hand, often the legislative assistants' research and memos will reshape their views. On almost every issue the legislative assistant will help the member build a firm rationale for his position, so that he can defend it in committee, on the floor of the House or Senate or at home. Finally, and perhaps most importantly, legislative assistants are responsible for putting into legislative form—as both original bills and amendments to pending bills—proposals their boss believes have merit, from either a national or local perspective. Obviously, many of the ideas for legislation originate with the members themselves. An equally important source is the legislative assistants, who develop their ideas while researching their issue areas, and by talking with local groups, local government officials, other staff members and interest groups.

The introduction of important legislation, the culmination of one process, is also the beginning of another. The road to passage of legislation is paved by the legislative assistants working with their members to build a coalition for passage of the legislation. To do this, the legislative assistants write statements for the *Congressional Record,* persuade other people—particularly the staff of the committee with jurisdiction over the bill—that the legislation is a good idea, work with interest groups affected by the legislation to build a coalition in support of it, seek testimony from witnesses at hearings praising the legislation, prepare amendments designed to meet the legitimate objections of others interested in the issue, and contact the national and local press to try to gain public awareness and support for the bill. Close to 10,000 House bills and 6,000 Senate bills were introduced in the 97th Congress; perhaps 3 percent will become law. It is a good thing for legislative assistants that they are not paid by the percentage of their bills that become law.

- Sitting atop the personal staff heirarchy is the administrative assistant, or AA. His job is part administrative and part political. As an administrator, he runs the office on a day-to-day basis. Running a congressional office is anything but routine, but a smoothly functioning office is the minimum that should be expected from an AA. A talented AA is one who can select staff people—with the member's approval—who can learn their jobs quickly, and who then require a minimum of supervision. The staff should be able to solve all but the most difficult and politically important problems without the detailed involvement of the AA. This allows the AA to concentrate on the political part of his job.

The AA's political role centers on two tasks: building the member's reputation among his colleagues—which will increase his effectiveness as a legislator—and getting him re-elected. The AA will help the member decide which side of an issue he or she should support, weighing both principles and politics. Broadly speaking, the AA will help the member define his overall objectives as a representative and help guide the member toward those objectives. The questions that arise have no simple answers. What committee should the member try to get on so that he or she will have a greater impact on issues important to his district? What issues might the member get involved in that will distinguish him from his colleagues and get him noticed? Should the member endorse candidates in local elections, and, if so, which ones? Should the member get involved in issues that will be controversial in his district? How can the member build a good relationship with the leadership of his committees? The questions never stop, and coming up with answers doesn't get easier with practice.

How do all these various pieces fit together? What

role does a congressman's staff actually play in the legislative process? Every congressional staff is a reflection of the member who hires it. The role the staff plays depends mainly on the personal characteristics of the member: how he views his job, and his personal style.

As the division of duties of the congressional staff indicates, the functions of a congressional office are divided between constituent service and legislation. No member of Congress can afford to ignore constituent service, but some members choose to emphasize it more than others. Members who devote most of their energy to local concerns will place few legislative demands on their personal staffs—aside from their providing basic information on legislation before the House—and will take their views on most votes from the party leadership or members whose votes they view as useful barometers. Their staffs will concentrate on constituent mail as soon after receiving it as possible, making sure constituents' Social Security checks and IRS refunds are issued promptly, and solving other constituent problems with the federal bureaucracy. The member may even read and sign all or most of the mail himself.

The legislative-oriented member will do all of the things the service-oriented member does, but he will spend much more time addressing legislative issues on the floor of the House, in his committees and in caucuses on different issues. Generally his staff will be one or two members larger than that of the service-oriented member. They will perform the same letter-writing and casework duties, but their member will demand more. He will want ideas for amendments, which the staffer may develop on his own and present in drafted form with all of the background information needed to argue for the amendment on the floor. He will want legislative proposals, developed by the staff with his approval but without his active involvement until the proposals are ready for introduction.

Some members have a narrowly-defined sphere of issues in which they are interested; others simply want to be active, and will get involved in issues on a case-by-case basis. The opportunities for staff independence and active involvement in the shaping of legislation are limitless.

The personality of the member will also have an enormous influence on the role of his staff. Some members prefer a formal relationship with their staff, viewing themselves almost as corporate executives. Staff contact will be limited, and communication will tend to be through memos. These staff members will generally be less able to speak for their boss, and will have much less freedom to pursue legislative ideas. Other members prefer a more open relationship with their staff. In making their decisions these members will tend to discuss issues and possible positions with their staff, and will give greater weight to the staff viewpoint on personal and political judgments as well as substantive decisions. In this case the relationship between member and staff seems to be more of a friendship than an employer-employee relationship, although the member always makes the final decision.

The general role of congressional staff members is to do all the things necesary to enable 535 individuals with limited time and unlimited demands to run the Congress. Staff positions range from 9-5 clerical jobs to 24-hour on-call administrative assistant jobs. Some are paid more than others, but all are vital to the smooth functioning of the legislative branch of government.

Know Your Representatives

What do you know about the people in Washington who represent you? How long have they been in office? On which committees do they serve? Where do they stand on the issues that affect you?

Answering the following questions will give you a clearer picture of who your representative is and how he or she is working for your district. Put in the form of a chart, your discoveries can be a handy reference tool for later use.

1. Find out which congressional district you live in. Who is the representative? Who are your two senators?

Now use this information to answer the following questions about these three people.

2. To which political parties do they belong?

3. When were they first elected? By what percentage of the vote?

4. Which committees are they on and what is their standing there?

5. What is their background and area of expertise?

6. Which major bills have they sponsored?

7. List five issues that are important to you and see if there's been any legislation concerning them. How did your representatives vote on these bills?

8. Where are their local offices? What goes on there?

9. Considering what you've read, seen and heard firsthand, in the media or from people around you, write down your general impressions of your representatives and senators.

Legislative Veto: A Question of Who Should Make the Laws

Elliott Levitas

Regulations are a large part of our lives. Federal regulations ensure that airplanes and airports are safe, that bank deposits are insured, and that the meat you buy in the supermarket is fresh and healthy. Although regulations resemble laws, they are not written by our elected representatives in Congress, but are instead written by unelected civil service employees. Over the last fifty years Congress has used a device called the legislative veto to retain some control over regulation. However, a recent Supreme Court ruling, Immigration and Naturalization Service v. Chadha, *declared the legislative veto unconstitutional and has forced Congress to look for new ways to establish control over the regulation process.*

In this ruling the justices upheld objections to the legislative veto which have been raised by presidents since the tool was first incorporated into a law in the 1930s. Although these presidents themselves found it necessary to propose laws containing legislative veto provisions, they felt that the device violated the constitutional provision that all legislation be approved by the House and Senate and signed by the president. Chief Justice Warren Burger stated in his opinion that the Founding Fathers "ranked other values higher than efficiency" and that they intended that legislation be approved by "a step-by-step, deliberate and deliberative process."

Below, Representative Elliott Levitas (D-Georgia), an outspoken defender of the legislative veto, discusses the history and reasons for congressional supervision of the regulatory process and suggests alternatives to the legislative veto. While reading the article you should consider what impact the Chadha *ruling might have on relations between the executive and legislative branches of government. Will the absence of the legislative veto make life easier for the president and harder for congress or vice versa? A short list of some of the 200 laws which contain legislative veto provisions is provided to enable you to consider the full extent of the Court's ruling and its implications for the efficient management of the nation's domestic and foreign affairs in the future.*

One of the first things a student of American government learns is that Congress makes the laws of the United States. The fact is, however, that in recent years the overwhelming majority of laws—called "rules and regulations"—are made by bureaucrats.

A regulation (also referred to as a "rule") has the same force and effect of a law passed by Congress. In a sense they are mini-laws, developed and issued by unelected, hired civil service employees—known as bureaucrats—in such government agencies as the Department of Education, the Department of the Treasury, the Environmental Protection Agency, the Federal Trade Commission and others.

When Congress passes a law, it sets general standards and guidelines for governing particular areas. For example, the Clean Air Act sets general standards for protecting the environment, such as regulations for maintaining the quality of the air we breathe. The Child Nutrition Act and the National School Lunch Act set up standards and guidelines for providing free or low-cost nutritional lunches to needy students in public schools.

Congress establishes these general standards by drafting such laws, but also delegates to the appropriate agency or department the authority to implement and administer the laws. The agencies do this by issuing rules and regulations, which become "mini-laws." In order to implement the Clean Air Act, for example, the Enivronmental Protection Agency puts out regulations that require states and cities to impose parking bans on automobiles or that require annual inspection of catalytic converters. The Department of Agriculture drafted regulations establishing the costs and quality of the school lunches. One such regulation the Department of Agriculture issued was intended to cut waste in the program by allowing a student to choose not to accept two items on his or her lunch tray. Before this regulation was issued, students had to take a full lunch tray regardless of whether they planned to eat all the items or not.

During the last forty or fifty years, with the proliferation of rules and regulations put forth by the bureaucratic departments and agencies, we have evolved in this country a "fourth branch" of government—the federal bureaucracy—which is making law just as binding as that made by Congress. In fact today far more laws are made by unelected bureaucrats than by Congress. It has been estimated that during the course of a Congress, between 400 and 500 laws will be passed; yet during this same two-year period, the regulatory agencies will put forth about 10,000 rules and regulations. And sometimes these rules and regulations go beyond the original intent of the elected Congress in passing the basic law, or they can be unreasonably bur-

densome, too costly or just plain stupid. It was through a regulation that the Department of Agriculture classified ketchup as a vegetable in the school lunch program. The public outrage in this widely publicized incident caused the Department of Agriculture to withdraw the regulation. But most unreasonable regulations

Legislative Vetos That the Supreme Court Vetoed

Here are some of the major laws that contained provisions for a legislative veto by one or both chambers of Congress. Because of the Court's decision, the status of the legislative veto provision within these laws and approximately 200 other laws is in doubt.

Foreign Affairs and National Security

- **Act for International Development of 1969**—Foreign assistance funds may be halted by a resolution passed by the Senate and the House.
- **War Powers Resolution, 1973**—In cases where there is no declaration of war, Congress may, with approval of both chambers, direct the president to remove U.S. troops from a foreign conflict.
- **Department of Defense Authorization Act of 1974**—Defense contracts of more than $25 million may be blocked by a resolution of either chamber.
- **Department of Defense Authorization Act of 1975**—Applications to export weapons, weapons technologies, or defense techniques may be disapproved by a resolution of both the House and Senate.
- **International Development and Food Assistance Act of 1975**—Foreign aid to countries that don't meet human rights standards can be cut off by a resolution approved by both chambers.
- **Nuclear Non-Proliferation Act of 1978**—Cooperative agreements concerning storage and disposition of spent nuclear fuel, proposed export of nuclear facilities, materials, or technology, and proposed agreements for international cooperation in nuclear reactor development may be disapproved by a resolution passed by both chambers.

Budget

- **Congressional Budget and Impoundment Control Act of 1974**—The president's proposed deferral of budget authority provided for a specific project may be disapproved by a resolution passed by either the House or the Senate.

Rulemaking

- **Education Amendments of 1974**—Department of Education regulations may be disapproved by a resolution passed by both chambers.
- **Federal Education Campaign Act Amendments of 1979**—Proposed rules and regulations of the Federal Election Commission may be disapproved by a resolution of either chamber.
- **Act of August 9, 1975**—Social Security standards proposed by the health and human services secretary may be disapproved by a resolution passed by either chamber.
- **Airline Deregulation Act of 1978**—Rules governing employee protection program may be disapproved by a resolution of either chamber.
- **Federal Trade Commission Improvements Act of 1980**—FTC rules may be rejected by a resolution passed by both chambers.
- **Comprehensive Environmental Response, Compensation, and Liability Act of 1980**—Environmental Protection Agency regulation concerning hazardous waste substances releases, liability, and compensation may be disapproved by a resolution approved by both chambers or by the adoption by either chamber of a resolution approved by one chamber but not rejected by the other.
- **Omnibus Budget Reconciliation Act of 1981**—The education secretary's schedule of expected family contributions for Pell Grant scholarship recipients may be disapproved by resolution of either chamber. Specified rules made by the transportation secretary may be disapproved by resolution of either chamber. Amendments to Amtrak's route and service criteria may be disapproved by resolution of either chamber. Consumer Product Safety Commission regulations may be disapproved by a resolution approved by both chambers or by a resolution of disapproval by one chamber and not rejected by the other.

Energy

- **Outer Continental Shelf Lands Act Amendments of 1978**—Establishment of an oil and gas lease bidding system by the secretary of energy may be disapproved by a resolution of either chamber. Export of oil and gas may be disapproved by a resolution passed by both houses.
- **Natural Gas Policy Act of 1978**—A president's plan to reimpose natural gas price controls may be disapproved by a resolution passed by both chambers. Congress may furthermore reimpose natural gas price controls with a resolution passed by both chambers.

International Trade

- **Trade Act of 1974**—Proposed presidential actions on import relief and actions concerning certain countries may be disapproved by a resolution passed by both chambers. Various presidential proposals for waiver extensions and for extension of non-discriminatory treatment of products of foreign countries may be disapproved either by a resolution of one chamber or a resolution approved by both chambers.

Miscellaneous

- **Federal Land Policy and Management Act of 1976**—Sale of public lands in tracts of over 2,500 acres and withdrawal of public lands totaling 5,000 acres or more may be disapproved by a resolution passed by both chambers.

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issued by unelected bureaucrats cannot be stopped that way. This is why I have been a leading supporter of the legislative veto.

The legislative veto over administrative rules and regulations is a means by which elected representatives can regain control over the laws that affect the American people. At the heart of the issue is the question of who should make the laws for this country—the elected representatives of the people or the unelected bureaucrats? It's a question of accountability—accountability to the people.

Simply stated, a legislative veto is a procedure by which Congress can review government agency regulations, which have the force and effect of law, and where necessary reject these regulations. Under this procedure many rules and regulations written by unelected bureaucrats were submitted to Congress, where the regulations could be disapproved by passing a simple resolution through one or both houses of Congress.

The legislative veto came into use in this century as a mechanism to deal with the realities of modern government. Some historians trace the use of a legislative veto device back many years in English history. To those scholars, the legislative veto was such a common instrument of government that the founding fathers saw no need to write such a procedure explicitly into our Constitution.

In 1929, President Herbert Hoover recognized the purpose a legislative veto could serve in the United States government in the twentieth century. Facing the need to reorganize parts of the federal bureaucracy and the structure of the executive branch, and realizing that it would be better for the executive branch to devise reorganization plans than for Congress to do so. This delegation of authority to reorganize the government has continued to operate with the check of a legislative veto as a means for maintaining the balance of power.

In other areas, the need arose for Congress to delegate authority to the executive branch in order that the government might cope realistically with the growing complexity of the society which it served. Control through the legislative veto mechanism has spread into numerous areas over the years—war powers, budget impoundment and control, foreign arms sales, nuclear proliferation, export controls, immigration policy, and regulatory policy.

But in June 1983 the Supreme Court (in *Immigration and Naturalization Service v. Chadha*) held that the legislative veto is unconstitutional. In the staggering 7-2 decision, the Court said that the legislative veto violates the constitutional provision that all legislation be approved by both the House and the Senate and signed by the president.

There is no point in dwelling on the merits or demerits of the majority opinion, for it is what we must work under at least for the time being. In my opinion we have experienced a train-wreck in government, and it is going to take some time to put the engine back on the tracks and get it moving again. It may be many years, in fact, before we can sort out all of the implications of the Supreme Court's decision. Legislative veto provisions have been included in over 200 laws, and it is unclear at this point whether or not the Supreme Court decision invalidates only the legislative veto provision, or whether or not the entire law becomes invalid under this decision. For in many cases, it is questionable as to whether or not Congress would have delegated authority to the executive branch without the string of a legislative veto attached. It is going to take time to determine which of these laws will stand without the legislative veto procedure.

This issue will most likely have to be resolved through careful analysis of the legislative history on each individual law, and possibly through litigation. The Court did not make it clear how they would rule in such cases in the future. In some laws the legislative veto could be eliminated (or *severed*) without destroying the rest of the law. But severing the veto from other laws would completely gut them. The difficulties of answering the severability question have prompted the counsel of the House of Representatives to recommend a wholesale repeal of delegations of authority affected by the Supreme Court decision. I believe that in many cases Congress will move to repeal the authority it had delegated to the executive branch.

In the short term, while these laws are being examined and conclusions are being drawn as to their standing without the legislative veto provisions, Congress is going to have to keep the agencies on short leashes and under short rations of appropriations. Short time periods for authorization and appropriations for agencies and programs will allow Congress to review agency action on a more frequent, periodic basis and curtail action which is inappropriate through the funding and authorizing process.

There are other mechanisms that the Congress may devise which would have the same effect as the traditional legislative veto, but which would fit within the framework of the Supreme Court decision. Some of these measures have already begun to be accepted by the Congress as alternatives to the legislative veto.

For example, when the House of Representatives considered the reauthorization of the Consumer Product Safety Commission (CPSC) on June 29, 1983, I offered an amendment, which was accepted by the House, requiring that CPSC rules which were previous-

ly subject to a legislative veto be affirmatively approved by the Congress before taking effect. The rules would have to be approved through the enactment of a joint resolution, passed by both Houses of Congress, and signed by the President. Obviously, if one House fails to pass the resolution of approval, we have in effect exercised a one-House legislative veto.

This approach may not be the answer for all rules and regulations, but I think it will work well for the CPSC and similar agencies which do not create a large number of rules.

There are other procedures which must be considered as well. One approach which deserves serious consideration is that embodied in legislation introduced by Senators Carl Levin (D-Michigan) and David Boren (D-Oklahoma). This legislation proposes a "report and wait" mechanism, which requires that agency rules and regulations be submitted to the Congress (report) and not implemented for a period of thirty to sixty days (wait), during which time the Congress would have a chance to review the regulations and act to disapprove them through the enactment of a joint resolution (with presidential approval).

Yet another approach which could be used to accomplish the purpose of the legislative veto is available through changes in the internal rules of the House. I will not comment on Senate rules or procedures. The rules of the House could be changed to provide that whenever rules or regulations are disapproved by the House of Representatives, appropriations for the implementation of those rules would be deemed "out of order." This change in the rules would be accompanied by legislation requiring that proposed rules be sent to the Congress for a review period ("report and wait"). During this time, the appropriate committee of legislative jurisdiction could review the regulations, and if it decided to do so, report a disapproval resolution to the House. The House could adopt the disapproval resolution, and in doing so prevent funding for the implementation of the regulations. The procedure would have no effect on the validity of the rule, but it would be controlling through the purse strings.

These are some of the ideas which are being considered as alternatives to the legislative veto, and some of them will suffice as means of controlling the bureaucracy at least in the short term. But we must move carefully in considering the long-term solutions to the problems raised by the Supreme Court decision. I have written to President Reagan and proposed that he, and the leaders of the Congress, call for the convening of a National Conference on Power Sharing to address these concerns in a comprehensive fashion.

It is very important that we act responsibly, yet swiftly, for we must move to reassert the control of Congress, the elected representatives of the people, over the unelected officials in the executive branch and the independent agencies. Their actions have the force and effect of law, and in the end, the Congress stands accountable for those laws.

The Superfund Bill

Prior to 1978, most people would have thought Love Canal was a honeymoon hideaway or maybe a ride in an amusement park. In reality, Love Canal is a residential area built over an abandoned chemical dump site in the city of Niagara Falls, New York, where residents were stricken and even died from the effects of deadly chemicals, or hazardous wastes, buried in the ground.

In the 1930's, Love Canal had been used as a dump site by both the city of Niagara Falls and by local industrial plants. Hazardous wastes left over from the production of chemicals had been loaded into metal drums and buried in Love Canal. At the time there were no laws against this method of hazardous waste disposal. In 1947, the Hooker Chemicals and Plastic Company, in need of its own disposal area, purchased the canal from the city. By 1953, when Hooker filled in and sealed the canal, the company had disposed of 22,000 tons of highly toxic, or poisonous, waste. Not long after that, 1,200 homes and an elementary school were built on the site. Soon the residents of the Love Canal area began to notice problems.

Residents found chemical substances seeping into their basements, especially after heavy rains. Dogs developed permanent nose sores after sniffing the oozing slime; soles of people's shoes were burned on contact. Miscarriages, birth defects and health related ailments plagued this relatively contained area.

One resident told a U.S. Senate subcommittee of the human tragedies at Love Canal:

> A nine-year-old child asked state officials at a public meeting, "Will I grow up to be a normal man?" The state told his parents not to let him sleep in his bedroom, for chemicals had been found there. His father has asthma, his mother and little brother have epilepsy.
>
> My family and I want simple things like a spring garden. Even this has been denied us, since the state has said the vegetables may not be safe for human consumption. But for years my family has eaten vegetables grown in our yard.
>
> A friend's husband died five years ago from cancer, her son six months later from cancer.

Medical testing of Love Canal residents showed high rates of miscarriages, birth defects and nervous breakdowns. Serious ailments and diseases were high compared to those of people living in other areas.

New York Reacts

On the basis of these tests New York Governor Hugh Carey declared a health emergency, and 239 families were forced to leave their homes. All pregnant women and children under two years of age had to move. The state paid for their relocation.

The state of New York, unfamiliar with such problems, looked to the federal Environmental Protection Agency for help under the new Resource Conservation Recovery Act (RCRA) of 1976. The EPA, an independent agency of the executive branch with principal responsibility for all environmental problems, could offer only technical assistance to the state because of the law's limited scope.

Governor Carey turned to Congress for help. New laws had to be written to determine liability for the costs of clean up and for any lawsuits that might be filed by the victims. He enlisted the support of Senators Jacob Javits (R-N.Y.) and Daniel Patrick Moynihan (D-N.Y.) along with Congressman John LaFalce (D-N.Y.). After the intervention of Congress and the resulting investigations by the Environmental Protection Agency, it was discovered that

The Health Hazards of Love Canal

Miscarriages in Women Living in the Love Canal Area

	number of pregnancies	*number of miscarriages*	*percentage*
Before moving to Love Canal	714	61	8.5%
After moving to wet area of Love Canal	155	39	25.2%

Birth Defects During Last Five Years

Children born	16
Number with birth defects	9
Percentage	56%

Nervous Breakdowns

	number of adults	*number of nervous breakdowns*	*percentage*
Contaminated areas	149	13	8.7%
Uncontaminated areas	510	7	1.4%

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30,000-50,000 dump sites existed around the country, some abandoned and some under supervision. Senator Moynihan spoke of Love Canal to his colleagues in the U.S. Senate, "The Love Canal situation is only the first and perhaps most publicized of many similar disasters in which the disposal of hazardous chemicals has caused the environment and health tragedy with which we are now attempting to deal."

Legislation to address the problem was the next logical step, but with more than 20,000 bills introduced per Congress, final passage of a bill is hard to guarantee—only about 700 ever become law in a two-year period. Even then, many of the bills go through numerous changes during the legislative process. Most bills never leave the House or Senate committee to which they are referred after introduction. There are endless opportunities to kill legislation through inaction.

One way for legislation to get attention in Congress is for the president to submit a proposal. Although the president can propose legislation, he cannot actually introduce bills into Congress, since this would violate the constitutional provision for separation of powers among the three branches of government. So the president must convince at least one congressman or one senator to sponsor his proposal.

Individual congressmen and senators can also introduce their own legislation. Usually a committee or subcommittee chairman will introduce legislation covered by his committee's jurisdiction. By being the committee chairman, a congressman or senator can exert more influence on the passage of a bill.

President Carter Proposes "Superfund"

On June 13, 1979, President Carter proposed legislation for a "superfund bill" (so named because of the large amount of money proposed in the bill) to pay for clean-ups of oil spills, chemical spills and hazardous waste sites:

> Today I am transmitting legislation to address some of the most significant environmental and public health problems facing our nation.... The case of Love Canal clearly demonstrates the unacceptable costs of improper hazardous waste disposal.... This proposed legislation is a comprehensive program with the financial responsibility shared by federal, state and local governments as well as industry.... It has become abundantly clear over the past several months that exposure of humans and the environment to dangers from spills of oil, hazardous wastes and from releases at uncontrolled hazardous waste disposal sites are two of the most pressing environmental problems facing the nation.... I am hopeful that this proposal will receive prompt consideration and speedy enactment. The health of the public and the environment cannot afford less.

Chemicals Found at Love Canal and the Diseases They Caused

compound	*diseases*
Benzene	leukemia, anemia
Trichloroethylene	paralysis of fingers, respiratory and cardiac arrest, liver damage
Methylene chloride	respiratory problems, death

Sources: Tests conducted at Roswell Park Memorial Institute, Buffalo, New York, and data provided by the State of New York Department of Health.

The four central elements of President Carter's proposal were:

- Money—A $1.625 billion fund would be created over four years.
- Who Pays—Government would provide 20 percent of the money, and private chemical manufacturers and oil refiners would provide 80 percent.
- Who Receives—Federal, state and local governments would receive funds to clean up oil or toxic spills, and those victims, namely fishermen, who suffer economic loss from oil spills would receive money to help cover their losses.
- Enforcement—The EPA would have the authority to clean up active and inactive dumping sites without first having to get a court order.

The administration's bill, H.R. 4571, was not the only legislation introduced. The fund's provisions—such as how much money would be required, how it should be raised and how far industry liability for damages should extend—generated competing versions of the legislation. Representative James Florio (D-N.J.) introduced H.R. 5790, which was similar to President Carter's version. H.R. 5291 was introduced by Representative LaFalce.

Once a bill is sponsored by a representative, it is dropped into the House's hopper to be numbered. At the end of each day, the bills are taken out of the hopper by the bill clerk. The bills are arranged in alphabetical order by the sponsor's last name and are then given a number. The numbering begins at "one" at the start of each new two-year Congress. In the House all bills are preceded by H.R. for House Resolution. In the Senate, proposed bills are handed to the legislative clerk, who has a desk on the Senate floor. Senate bills are always preceded by S. The bills are then assigned to the committee(s) that has jurisdiction over the specific area of public policy. The committee(s) in turn assigns the bill to one of its subcommittees.

The Carter bill was assigned to three committees: the House Public Works and Transportation Com-

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mittee and the Merchant Marine and Fisheries Committee because of the oil spill provisions, and the House Interstate and Foreign Commerce Committee because of the hazardous waste inclusion.

Congressman Florio's bill was assigned by the speaker of the House to the Committee on Interstate and Foreign Commerce, today known as the Committee on Energy and Commerce. The House Merchant Marine and Fisheries Committee was working on a draft of its own, H.R. 85, introduced by Congressman Mario Biaggi (D-N.Y.), because of its reference to oil spills in navigable waters.

Throughout 1979 the Subcommittee on Transportation and Commerce, chaired by Congressman Florio, held hearings on H.R. 5790 and the problems of hazardous waste disposal. More than 25 people testified during the hearings. Many different points of view and opinions were presented by witnesses at the hearings:

Barbara Blum, *deputy administrator, Environmental Protection Agency*

Daniel W. Cannon, *director, Environmental Affairs, National Association of Manufacturers*

Larry Crane, *on behalf of the Subcommittee on Environmental Management, National Governors Association*

A. Blakeman Early, *Washington representative, Sierra Club, on behalf of several environmental organizations*

Richard L. Hanneman, *director of government and public affairs, National Solid Wastes Management Association*

Robert A. Roland, *president, Chemical Manufacturers Association*

Edwin Wheeler, *president, Fertilizer Institute*

Chemical Manufacturers Argue Against Superfund

A key witness was Robert Roland, president of the Chemical Manufacturers Association (CMA), a trade association having 190 corporate members representing more than 90 percent of America's production capacity of basic industrial chemicals. Mr. Roland told the subcommittee of the CMA's opposition to a superfund and was then questioned by Congressman Florio:

Mr. Roland: Echoing the sentiment expressed in your opening remarks, I would say that it is certainly the desire of the Chemical Manufacturers Association and the members of the organization to engender the same spirit of cooperation that you are looking for.... I think we have been constructive from the beginning. We will be as cooperative as the situation permits us to be.... At the same time, we do not believe that the sweeping superfund or ultrafund approach is an appropriate way of resolving the uncontrolled site problem.... It is unfair to place the burden on today's companies, shareholders, or customers for practices, failures or shortcomings of yesterday's industrial producers...hazardous wastes are not the product of chemical manufacturing activities alone...they are an integral byproduct of our industrial society and byproducts of the daily life of every citizen...it is unfair to single out the chem-

A Coast Guard fireboat aids in cooling down "hot spots" in aftermath of fire at a New Jersey chemical company.

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ical industry for punishment in a fee system....

Mr. Florio: Let me ask you very bluntly what caused your organization to change its mind from what was presented to me...four or more months ago...that is substantially different from the philosophic position you are taking today, that the industry wants to wash its hands of the responsibility to contribute directly to the funding.

Mr. Roland: The matter of equity. Many companies have responsibly conducted their waste disposal practices in the past...further down the stream of commerce, companies may have been irresponsible, and yet you are going to levy the fee on a feedstock basis against a chemical manufacturer who may have been acting responsibly and not contributing in any way to the problem.

Another key witness was Blakemen Early of the Sierra Club. The Sierra Club is an environmental organization that advocates the preservation of wildlife. Mr. Early took a very different position from that of Mr. Roland:

Mr. Early: I am appearing this morning on behalf of not only the Sierra Club but several other environmental organizations...which believe that existing international, national and state laws on liability and compensation are inadequate and favor a broad coverage for a superfund bill...and that the cost of clean up and compensation from hazardous releases is borne either by those who caused the release or the industry that benefited from the activities that spawn hazardous substance releases and not the victims or the government...that the fee be assessed at a very high point in the chemical production process.

Progress Slowed

The legislation did not move through Congress as President Carter and the other bill sponsors had hoped. By combining oil spills with hazardous wastes, President Carter spread jurisdiction of his bill over three committees, thus slowing the process. Congressman Florio also faced obstacles when he was unable to get his bill out of the subcommittee (he had alienated some of his own subcommittee members by failing to consult them on different points). Pressure from the oil and chemical industries also added to the delays, as industry and legislators met to work out compromises—namely the debate over whether government or industry would fund the bill and to what degree. According to William Stover, CMA vice president, "The CMA will not stand by and watch the lynching of the chemical industry." He called the administration's proposal "a terrible bill." As a result of the delays caused by dissent, no superfund legislation was passed in the first half of the 96th Congress.

A Second Start

In 1980 during the second session of the same Congress, the superfund bill was introduced in the House and Senate in new versions. In the House, legislation was again sponsored by Congressman Florio, replacing H.R. 4571 and H.R. 5790 from the previous session. As a compromise, Congressman Florio—to garner greater support from industry and from his own colleagues—scaled down his revised bill, H.R. 7020, to $600 million to be split equally between government and industry. The new bill was still a tough package to sponsor.

On April 30, 1980, the Transportation Subcommittee approved H.R. 7020 by a vote of 5-3 after two substitutes offered by Congressmen Edward R. Madigan (R-Ill.) and John M. Murphy (D-N.Y.) were defeated—they would have restricted the scope of the bill. The bill then proceeded to "mark-up," where the full committee went over it piece by piece, adding or deleting provisions. On May 13 the committee approved the bill 21-3.

At the same time that H.R. 7020 was winding its way through the congressional process, H.R. 85, the oil spill counterpart, was also under consideration. The Merchant Marine and Fisheries Committee held its own hearings and mark-up sessions. A $200 million fund was authorized specifically for chemical and oil spills in navigable waters. H.R. 85 next went to the House Public Works Committee, which increased the funding to $300 million in May.

Both bills were referred to the Committee on Ways and Means, one of the more powerful committees in the House, which considers revenue aspects of bills. Members of the Ways and Means Commitee made the following changes:

- Money—They increased the amount of the superfund in H.R. 7020 to $1.2 billion, and increased the amount of H.R. 85 to $750 million.
- Who Pays—According to H.R. 7020, 25 percent would be paid for by government, 75 percent by industry; according to H.R. 85, industry would pay for the entire fund.

The Ways and Means Committee issued a statement explaining its action:

> The Committee on Ways and Means believes it is important to establish a readily available source of funds to respond to releases of hazardous waste

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> from inactive waste sites which endanger public health and the environment. The committee recognizes that the United States Government must bear some of the costs incurred for this purpose. However, it also believes that these costs generally should be borne by the party responsible for the waste, and alternatively by the industries which create the items most frequently located in inactive waste sites.

Before either bill could proceed further in the House, each had to go to the Rules Committee. Unlike a Senate bill, which does not go through a Rules Committee, every House bill must go to this body before it can proceed to the floor for debate. When the committee votes on a rule, it determines how much time will be allowed for floor debate and whether further amendments can be offered. Some bills die at this stage, never reaching the floor. Both bills, however, were granted rules on August 27, 1982.

By the time H.R. 7020 reached the House floor, there was little debate. Time was running out and there was strong constituent pressure to do something. The Chemical Manufacturers Association gave last minute support because it didn't like the stronger Senate version. One of the chemical industry's congressional allies, Representative Madigan, chastised both sides for stalling the legislation:

> The punitive attitudes of the architects of most of these superfund proposals have created an environment that has not been conducive to the development of a good legislative product. I might also suggest that those in the business community who have stonewalled the legislative process, hoping to stop any legislation, have made it very difficult for those of us who wanted to develop a reasonable bill.

On September 19 the House passed H.R. 85 by a vote of 288-11. Four days later H.R. 7020 passed 351-23. Together, the two bills would provide a $1.2 billion superfund to clean up oil and chemical spills.

House Floor Action

Mr. Dannemeyer (R-Calif.): Mr. Chairman, the key question in the debate over H.R. 7020 is not whether abandoned waste sites should be cleaned up but who can do the job best, and quickest.... But this bill would have us spend all that money, whichever the amount is, before we have found out how many of these sites there are, what the best means are of disposing of them, how much money is really needed.... Somewhat ironically and unfortunately, the bill provides for studies to obtain this information, but does not wait for the results before giving the EPA administrator both the money and authority to act.... After all, it may just turn out that private enterprise can solve the problem more quickly and cheaply than EPA, and that superfund and superbureaucracy are not really all that necessary.

Mr. Madigan (R-Ill.): Mr. Chairman, I rise in support of H.R. 7020, and I would like to say at the outset and in response to some remarks that I understand were made on the floor of the House last night that H.R. 7020 is not a majority party proposal. The bill that is before us now is a compromise that was drafted by the gentleman from New Jersey (Mr. Florio) and myself in the Commerce Committee when the majority party proposal failed to receive enough support so as to be able to move ahead. This compromise...was reported...with substantial support from the minority party. So I want to express my regret that anyone would represent the minority party in debate on the floor of the House as being opposed to doing something about this problem.

The *Washington Post* reported the results of the vote the following day:

> The House last night passed and sent to the Senate a bill setting up a $1.2 billion "superfund" to finance the clean up of hazardous wastes dump sites. The measure, which had the reluctant support of the chemical industry, passed 351 to 23. Sponsor Rep. James J. Florio (D-N.J.) said the overwhelming vote "indicates a mandate from the people" for action on the nationwide problem of abandoned toxic chemical wastes.... A $4 billion version...is bogged down in jurisdictional squabbles in the Senate.... Supporters said they thought the House action might generate enough momentum to pry it loose.... "We're concerned that the industry is regarding this as a compromise version, and we don't see it that way," said Blake Early of the Sierra Club.... The Chemical Manufacturers Association...gradually shifted its efforts so as to limit the scope of an idea whose time seemed to have come. The association never argued that the money would in any way endanger their business.

House Vote

H.R. 85	*H.R. 7020*
September 19, 1980	September 23, 1980
288-11	351-23
Republicans: 106-5	Republicans: 123-14
Democrats: 182-6	Democrats: 228-9

The new Senate version, S. 1480, was quite a bit stronger than its House counterpart: Even though the amount of the fund was comparable, it would be paid entirely by the chemical industry. Superfund, in the form of S. 1480, followed a similar path in the Senate through committees and to the floor, but there were some differences:

- Only hazardous wastes and not oil spills were included in S. 1480.
- There is no Rules Committee in the Senate. All debate is open-ended unless three-fifths of the Senators present vote to limit debate (called cloture).

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Two subcommittees of the Senate Committee on Environment and Public Works—The Environmental Protection and the Resource Protection Subcommittees—worked jointly on the bill. Following is a list of some of the many people who testified.

Witnesses (Partial Listing)

Ann Hillis and James Clark *of the Love Canal Homeowners Association, Niagara Falls, New York*

Thomas C. Jorling, *assistant administrator for water and hazardous materials, Environmental Protection Agency*

Bruce D. Davis, *executive vice president, Industrial Chemicals Group, Hooker Chemical Company, Niagara Falls, New York*

Michael O'Laughlin, *mayor, Niagara Falls, New York*

Dr. William Nicholson, *Mount Sinai School of Medicine, New York, New York*

Kenneth Kamlet, *director, Toxic and Hazardous Waste Section, National Wildlife Federation*

S. 1480 was ready for the full committee and was marked up June 23, 1980. Four days later it was approved by the Senate Environment and Public Works Committee, 10-1. The lone opponent was Senator Alan K. Simpson (R-Wyo.), who objected to the fund's size and scope. He stated that the bill "preempts state common law.... It gives me the creeps." The Chemical Manufacturers Association was also displeased with the work of the committee. As reported in the *Washington Post,* June 28, 1980, Robert Roland of the CMA called the Senate Committee product "impractical, unnecessarily broad and punitive. Any fund financed by the industry is repugnant." The bill then went to the Finance Committee since it included tax provisions. It remained stalled there for some time.

The bill that passed the Senate Environment Committee included:

- Money—$4.1 billion
- Who Pays—Industry would pay for 88 percent, government for 12 percent.
- Who Receives—The bill included some restrictions on who could sue for personal injury, but overall allowed for greater victim compensation than did H.R. 7020.
- Enforcement—This was similar to H.R. 7020.

The *Wall Street Journal* reported:

> The chemical industry seems to be losing its battle to block a potentially troublesome hazardous-waste bill from clearing Congress. The Senate Environment Committee approved a tough hazardous-waste bill by the surprisingly large margin of ten to one, with the only dissent coming from freshman Republican Alan Simpson of Wyoming. Earlier this year, when the Senate panel was snarled in debate, industry lobbyists had hoped that the bill might die in committee.... The only bright spot for industry lobbyists Friday was the Senate committee's approval of an amendment by Senator Peter Domenici (R-N.M.) that would prevent many private lawsuits for damages that occurred before enactment of the bill.

Final Floor Action

On August 6, twenty-five senators signed a letter requesting floor action on S. 1480 and sent it to Majority Leader Robert C. Byrd (D-W.Va.) and Minority Leader Howard H. Baker (R-Tenn.).

The bill came to the Senate floor in late November, where it faced stiff opposition. Senate Republicans, led by Senator Jesse Helms (R-N.C.), threatened a *filibuster.* During a filibuster a senator or representative talks and talks about anything that will use up time in order to halt legislation.

Senate Floor Action

Mr. Bradley (D-N.J.): This legislation is not as extensive as I would like, but it is an important beginning. I hope the House will concur speedily in our amendments and that we will have a law enacted this year.... The tragedy of Love Canal with its story of birth defects, miscarriages and liver abnormalities from chemical exposure is the best known case, but there are other examples as well. They include pollution of the water supply of over 300,000 people in Iowa, discovery of up to 30,000 leaking barrels of chemical waste in Kentucky and contamination of ground water supplies from the dumping of pesticide wastes in Tennessee.... The Stafford-Randolph compromise does not create new costs. It puts the cost on the sector most responsible for pollution and that benefits most from chemical production instead of on the victim or on the government, as it stands now.

Mr. Mitchell (D-Maine): Mr. President...S.1480 is a reasonable bill. It is an equitable bill. But we are in the final days of this session, and faced with the threat of a filibuster by the opponents of S. 1480. So, S. 1480 cannot be enacted this year. The choice is between this compromise and no bill at all. Therefore I will vote for the bill now before us, with some reluctance.

Mr. Jespsen (R-Iowa): Mr. President, I intend to vote for the legislation before us today because we need to go about the business of cleaning chemical waste problem areas.... I will be monitoring the administration of this bill to see that it performs now—not hundreds of regulations and court suits later.

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During the floor debate an amended bill was crafted by Senators Robert T. Stafford (R-Vermont) and Jennings Randolph (D-W.Va.) to try to move the legislation toward a vote and to prevent a filibuster. The compromise contained about 25 percent of the money in the Environment Committee bill—$1.6 billion instead of $4.1 billion. Under the compromise, victims would no longer be compensated for medical expenses. "I am a realist," said Senator Stafford. "At this time and in this place, S. 1480 cannot be enacted, but this final compromise can." He was right. The substitute bill was accepted 78-9, then sent to the House for concurrence. Said House sponsor Congressman Florio of the Senate passage, "The measure is not perfect, but a good bill. No one should apologize for it."

Senate Vote
H.R. 7020
November 24, 1980
78-9
Republicans: 33-3
Democrats: 45-6

Since both the House and the Senate passed different superfund bills, leaders from both sides met informally to work out a compromise and did not call the usual conference committee. Congressman Florio and Senate negotiators Staffords, Randolph, Baker and Byrd met several times to negotiate and bargain in order to merge the two bills into one. Negotiations were heated, and the debate went back to the House floor, where concessions were made to facilitate passage in the waning hours of the 96th Congress. A final $1.6 billion fund, minus oil spill coverage, was agreed on. At last the House passed the Senate version by a vote of 274-94 on December 3, 1980, after telephone lobbying by President Carter. The Senate also passed the same bill. "This is the proverbial bird in the hand," said Representative Thomas Downey (D-N.Y.). "We can't afford to wait."

House Vote on Compromise Bill
H.R. 7020
December 3, 1980
274-94
Republicans: 79-58
Democrats: 195-36

Carter Signs "Superfund" into Law

The final bill, now referred to as H.R. 7020, was sent to President Carter for his signature. The superfund was a top priority for the Carter Administration, and President Carter lobbied for passage up

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to the last minute. On December 11, 1980, the superfund legislation became Public Law 510. During the signing of the bill, the president made the following remarks:

> Almost 1½ years ago I sent to the Congress the original proposal for this landmark legislation, landmark in its scope and its impact on preserving the environmental quality of our country, a problem that had been neglected for decades or even generations.... I now take great pleasure in signing into law H.R. 7020, and I'm proud that the Congress and my administration have come together to produce this timely and urgently needed response.

The superfund legislation passed in 1980 was the government's response to a public need—the need to address the hazards of toxic wastes and the need for the government to protect its citizens. As Doctor Irving Selikoff commented in a *Time* magazine article, "The disposal of chemical wastes products became one of the most complex and expensive environment control and cleanup tasks in history."

From the moment legislation was proposed, lobbyists tried to sway policymakers. The chemical industry, environmentalists, victims and even the president lobbied for what each believed to be the only fair way to deal with the problem.

The superfund bills introduced in the 96th Congress passed through the usual channels, with all the delays and debate of the legislative process. The process is usually slow—for the bills to have made it out of their committees to the floor in one Congress was a major step. Remember that only about 700 bills of the 20,000 plus introduced in each Congress ever become law.

To appease supporters and non-supporters alike, a compromise bill was eventually agreed upon. Those on each side of the issue played give-and-take, with nobody being truly satisfied. The final superfund measure was not the answer to hazardous waste and all its implications, but it was a major step toward addressing a nationwide problem.

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Know the Powers of Congress

The first words in the Constitution after the Preamble state that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." The specific powers granted to the Congress are set forth later in Article I, Section 8, which you have read on previous pages of this chapter. A good way to begin in the discussion of the powers of Congress is by focusing on these powers established in the Constitution.

Twelve important powers are listed below. For each power list at least one example from history which illustrates the use of that power by Congress.

Powers

1. Levy and collect taxes
2. Regulate foreign and interstate commerce
3. Declare war
4. Provide for the common defense
5. Coin money and regulate its value
6. Establish immigration laws
7. Provide for the general welfare
8. Create courts inferior to the Supreme Court
9. Establish post offices and roads
10. Override a president's veto
11. Exercise authority over the District of Columbia
12. Make all laws necessary and proper for carrying these powers into execution

Members of Congress Are Getting Younger

(Average age at start of first session)

	House	Senate	Congress
1949	51.0	58.5	53.8
1955	51.4	57.2	52.2
1961	52.2	57.0	53.2
1967	50.8	57.7	52.1
1973	51.1	55.3	52.0
1975	49.8	55.5	50.9
1979	48.8	52.7	49.5
1981	48.4	52.5	49.2

Source: Congressional Quarterly Weekly Report

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4. The Supreme Court and the Judiciary

"Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized nations together."

—Daniel Webster

"There is hardly a political question in the United States that does not sooner or later turn into a judicial one."

—Alexis de Tocqueville

"Equal Justice Under Law"—These words are inscribed above the entrance to the Supreme Court. They affirm the central principle upon which our government is based: that the law is supreme and applies equally to all Americans. The authors of the Constitution created a separate and independent judicial branch of government to ensure that presidents, members of Congress, government officials and citizens all respect and abide by this principle.

As have the roles of the other branches of government, the role of the judicial branch has changed over the years. In the early 19th century, the case of *Marbury v. Madison* established the Supreme Court's right to review the constitutionality of laws made by Congress. This right to interpret the Constitution greatly increased the Court's power, but some critics maintain that as a result the Court has engaged in social policymaking of a kind that shoud be reserved for Congress.

Of course, the judiciary is composed of more than the Supreme Court. On the federal, state and local levels there are thousands of other courts. Few cases ever reach the Supreme Court, and most of those that do must first go through several lower levels beforehand.

This chapter examines the role of the Supreme Court and the judiciary in our political system and the way in which the law affects us all. Has the Supreme Court assumed too prominent a role in formulating social policy? What have been the effects of Supreme Court decisions on the working of the lower courts? As you read the articles in this chapter ask yourself these questions, and think about the way in which the courts affect everyday life.

In This Chapter

Tom Clark
Thoughts on the Supreme Court
The late Supreme Court justice reflects on the Supreme Court and its influence upon our governmental process.

Charles Mirarchi
The Effect of the Supreme Court on the Trial Judge
A well-known judge and law professor examines the role of a trial judge and the impact of Supreme Court decisions upon our criminal justice system.

Warren Burger
The State of Criminal Justice
The chief justice of the United States contends that stricter penalties are needed to eliminate the crime epidemic in our nation.

Two Views: Should Congress Control the Supreme Court?

Robert W. Kastenmeier
The Court Must Stay Supreme
The chairman of the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice argues that Congress should not pass laws limiting the authority of the Supreme Court.

Orrin G. Hatch
The Constitution, Not the Court, Is Supreme
The Republican senator from Utah and chairman of the Senate Judiciary Subcommittee on the Constitution argues that the Constitution gives Congress the authority to check excesses by the Court.

Fred Barbash
Court Rulings Hinged on the Middle Faction
The *Washington Post* columnist covering the Supreme Court gives his view of how the nine justices lined up in the Court's 1982 term.

Case Study: The Supreme Court School Desegregation: How the Court Changed Public Policy
In 1954 the Supreme Court broke down the barriers of school segregation and began two decades of judicial activism in determining public policy.

Words to Know

affirmative action
appeal
attorney general
Bill of Rights
civil law
civil rights
defendant
desegregation
discrimination
double jeopardy
felony
grand jury
indictment
injunction
judicial review
misdemeanor
precedent
probable cause
quota
reverse discrimination
segregation
subpoena

Thoughts on the Supreme Court

An Interview with Tom Clark

This interview was conducted on August 23, 1976, in Justice Clark's chambers in the Supreme Court. The late Justice Clark spent more than 50 years as a lawyer and judge. He served as attorney general of the United States from 1945 to 1949, when President Truman appointed him an associate justice of the Supreme Court. He then served on the Court until 1967, when he resigned because of a potential conflict of interest that arose when his son, Ramsey Clark, was named attorney general.

In the interview, Justice Clark describes how our interpretation of the Constitution has changed over the years as our society has changed. He also states his belief that our founding fathers designed the Constitution to allow for such change.

CLOSE UP: Woodrow Wilson once called the Supreme Court "the balance wheel" in our system. Justice Robert H. Jackson said that the Court's function was nothing less than to be an arbiter among rival forces in our society. After your many years of service on the Court, how do you see its role in our political system?

Justice Clark: Well, I think that Chief Justice (Warren) Burger put it pretty well when he said, "If you want to play a baseball game, what do you have? You have an umpire, otherwise the game is going to end up in a riot before the nine innings are played." I rather think that the Court is somewhat of an umpire. It considers what the Congress proposes, or what the executive proposes, or what some individual claims, and rules upon these laws, proposals, and claims by comparing them with the law as laid down by the Constitution...and then calls the strikes and the balls.

The Watergate case was a good example of the Supreme Court's responsibility to decide whether or not the Congress or the president had exercised authority in a constitutional way. I attended a conference in London a few months ago. After a thousand years without a written bill of rights, the English are contemplating drawing one up, and the people there were quite frank about their impressions of Watergate. They seriously questioned what might have happened to our federal government during Watergate if the judiciary had not been a separate, independent branch.

You also should remember that we on the Court serve another role. If the decisions of the other two branches are in keeping with constitutional doctrine, we use our authority to uphold these decisions. And if a citizen doesn't voluntarily follow the rules laid down by the Congress or by the president or by other courts, why then it's our job to enforce those rules so that that individual will be punished or reprimanded.

CLOSE UP: Justice William H. Taft once said that courts are composed of people, and one would be foolish to deny that courts are not affected by the time

in which the justices live. How much do you think the needs of the times affect the decisions of the Court? How is public opinion brought into the process of taking cases and making decisions?

Justice Clark: Well, I served 18 years on the bench and frankly, I myself doubt if any public clamor or any political manipulation on the Court can be effective. I did get quite a few letters from all over the country about various things, but I don't think any of those things influenced my thinking on the legal matters which were involved.

Yet we are influenced by the necessities of the time.

Every year there are new cases, new people who come "knockin' on our door" with constitutional questions which need to be resolved. Take for example the criminal field. We started out with the case of *Griffin v. Illinois** in which Griffin said, "I'm being charged with murder, which is a felony, and I ought to be entitled to read the transcript of what went on in the courtroom. I'm just a layman and couldn't remember everything. Without a transcript, I wouldn't be able to appeal to a higher court." So when this came to us (the Supreme Court) on appeal, we ruled that defendants are entitled to a transcript.

But once they got the transcript they couldn't tell much about it without a lawyer and they commenced again to "knockin' on our door." In an old case before I became a justice, the Court had ruled that only in felony cases should a lawyer be appointed. Exceptions were made to this case over the years as additional cases came before the Court, until we had the Gideon case.** In this one we ruled that everyone accused of a crime was entitled to a lawyer. What happened was, they kept "knockin' on our door," and finally we extended the ruling to misdemeanors as well.

So you had it going full sway. That's because of the necessities that were brought to our attention. Now you say, well, weren't those brought before? Possibly they were, but not with the impact that they were brought to us.

The same was true in segregation. We had one case which had to do with segregation in the field of graduate education. We ruled that this was unconstitutional and later there came the case of *Brown v. Board of Education,**** which was on the grade school level. Then other questions came up. What about public accommodations? What about swimming pools and things like that? And the first thing you know they're "knockin' on the door." I don't know whether you'd say that the individual citizen who felt the pinch knocked on the door, or whether the lawyer looking out saw the pinch and tried to minimize it. I rather think that the pinch was what caused it.

CLOSE UP: Do you think our founding fathers had the changing times in mind when they wrote the Constitution and left it vague, almost ambiguous, in parts?

Justice Clark: The people who wrote the Constitution did not lack for a choice of words. People like Madison and Jefferson may not have had a thesaurus which we have today, but they didn't need it.

They intentionally used phrases like "due process of law." What is "due process of law?" "Due" to one justice might be an entirely different matter than it may be to me. I think they did it deliberately in order to keep the Constitution from being a straight-jacket or existing in a vacuum. They knew that the country was going to develop and change; they had great hopes for it changing from the standpoint of the advancement of science and literature. They wanted to put the Constitution in vague terms so that a later generation might be able to interpret it, so that the necessities of the times would be met.

"The real strength of the position of the Court is probably in its indispensability to government under a written Constitution. It is difficult to see how the provisions of a 150-year-old document can have much vitality if there is not some permanent institution to translate them into current commands and to see to their contemporary application."

Justice Robert H. Jackson, 1946

I know that some justices think there are some absolutes, but I don't believe there are any absolutes in the Constitution. You have to read a whole amendment, not just a single clause of it. And when you read a whole amendment, I think it leaves the door open to interpretation and I believe this was deliberate.

Even though we may call it vague and open to interpretation, it's interesting to look and see how few amendments we have had. Counting the Bill of Rights, which was ten amendments passed in a package, we only have 26 amendments in all. If you compare it to the Constitution of New York State, which has over 300 amendments, I think it's pretty amazing.

CLOSE UP: That brings us to the question of "judicial review." When the Supreme Court declares an act of Congress or an action by the president unconstitutional, is this not taking on a legislative function?

Justice Clark: In a technical sense, I don't think they do. But from a practical view, certainly they legislate. This is not really done to initiate change. That's the Congress's power and responsibility. Congress can see that something is wrong in an area and then hold a hearing on it and pass a law. The Court can't do that.

*Editor's Note: In the case of *Griffin v. Illinois* (1956) the Supreme Court ruled that a defendant who is appealing a court decision should not be denied a copy of the transcript of his trial because of inability to pay for it.

**Editor's Note: In *Gideon v. Wainwright* (1963) the Court ruled that all defendants are entitled to a lawyer appointed by the court if they are unable to pay for one themselves. See the "How a Case Reaches the Supreme Court" diagram for more details on the *Gideon* case.

***Editor's Note: In *Brown v. Board of Education* (1954) the Court ruled segregation in public schools to be unconstitutional. See the case study, "The Supreme Court as Policy-Maker" for further information about the *Brown*case

The Court has to wait until the question is brought before it in a lawsuit. From the standpoint of initiating change, our function is not legislative at all. From the standpoint of the practicalities of change, one could say there is some judicial legislation.

CLOSE UP: You served as attorney general before being appointed to the Supreme Court. I wonder if you would comment on the differences between these two high positions?

Justice Clark: It is definitely quite a transition. When I came here I sat next to Bob (Justice Robert H.) Jackson, who was a former attorney general, and I said, "Bob, how long did it take you to get acclimated here?" He said it took close to five years. That may sound like a long time, but when you compare the circumstances and the atmosphere and the climate that are here with that of the Justice Department, they are definitely two different worlds.

When I was attorney general, I would have 50 to 75 phone calls in half a day. I had about 1,000 lawyers working for me and that didn't include the FBI. I had five secretaries in my immediate office and about ten across the hall who wrote letters. Here I spend my days writing opinions, hearing cases, and discussing with my fellow justices. I have only a handful of clerks to help me. I'm only 200 yards from the dome of the Capitol, but it might just as well be 200 miles.

CLOSE UP: Most citizens seem to have a much different perception of Supreme Court justices than of other public officials. Some of the others are "Hollywoodized," treated like superstars. Justices appear to be held above this sort of treatment. Whether you are a student, tourist, or one of the country's foremost lawyers, you are filled with a tremendous feeling of awe and respect for the Court building, its atmosphere and those who serve on the Court. Could you say something about your perceptions of justices?

Justice Clark: Now, it's true that judges are human beings. We don't have horns, we really don't. We act just like other people do. But I rather think it has proven true that most of the 101 justices that have served on the Supreme Court have been a little more inconspicuous than they were in other positions. I think it is good that it is that way because the public expects more from a justice. You have to be more careful in what you say and in what you do. Our main function, when a case is presented, is to study it over and decide just what we think the Constitution requires us to do, regardless of what the clamor might be to the contrary.

CLOSE UP: Looking at your long history on the bench, one thing intrigues us. Of all the cases in which you have had a part, is there any that stands out as being the most important or most difficult?

Justice Clark: I'd say it would have to be the case of *Baker v. Carr,** the one on reapportionment. At the time I did not realize the full impact that it was to have, but looking back, I feel that its effects have been considerable. Every legislature, at least once and some two and three times, has reapportioned its state since 1963. As a consequence, the case has affected the lives of every person in the United States. One sure thing is that a politician recognized the power of the vote. If the vote is of equal weight, then every person knows that he has the same voice in the selection of leaders as does the fellow who is walking the other way. We've had a lot of problems with reference to people not taking too much interest in government and public affairs, and reapportionment at least helps to alleviate that by restoring some confidence in just what your vote can mean.

CLOSE UP: It seems that the experience of the average person with the judicial system might be in a traffic court, or possibly family court or small claims court. These are all cases where decisions are somewhat easy to comprehend and the effects are tangible and immediate. Could you offer an explanation which will help the students to understand both how and why the decisions that are made by the Supreme Court affect their lives?

Justice Clark: Well, of course, the reason their lives are affected is that quite a number of our cases affect their rights and duties as citizens. Some of our cases, say business or antitrust matters, wouldn't have a direct effect on all the people, but many of the cases we've had in recent years have had a direct bearing upon everyone. We've been charged with the defense of the Constitution and I say that's the most important document this country has. You may not always realize it, but that document, the Constitution, plays a major part in your freedom and in your opportunities to do the things that you enjoy doing.

I'd like to say that I hope that young people will take a greater interest in the judiciary. We don't have any way to go around blowing our horn and we want people to be better acquainted with the judicial process. This will help us to improve the process; it will help immeasurably when people learn more of how this process works and the necessity for it. I hope that if they find that the courts are slow, or if they feel that the courts should be less ponderous, why, they should speak up. They speak their minds pretty freely and I'm proud that they do. It would be of untold benefit to us to have reactions of that kind. It's not that we would change immediately, because we have to go slowly on these things, but I think in the long run they'd have considerable impact.

***Editor's Note:** In *Baker v. Carr* (1962) the Court ruled that federal courts had the power to force changes in the way in which a state legislature apportions electoral districts, if this violated the 14th Amendment's equal protection clause.

The Supreme Court and President Reagan.

The Supreme Court

Starting with the chief justice, list the nine members of the Supreme Court.

	NAME	APPOINTED BY
1.		
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The Effect of the Supreme Court on the Trial Judge

Charles P. Mirarchi, Jr.

Charles P. Mirarchi, Jr., is the administrative judge of the trial division of the Court of Common Pleas, Philadelphia County, Pennsylvania; and adjunct professor at Delaware Law School of Widener University. As administrative judge, he has under his jurisdiction all of the civil and criminal trials of Philadelphia County. In this article he presents an in-depth look at changes in the criminal justice system that have occurred as a result of Supreme Court decisions. Judge Mirarchi outlines important cases that have affected the role of a trial judge in ensuring a fair trial for all defendants.

What is the role of a state trial judge in the criminal justice system? Basically, the trial judge in a criminal matter is responsible for presiding over the trial of an accused and ensuring that both the state and the defendant receive a fair trial.

It was not too many years ago that this responsibility solely involved a trial, at which time the guilt or innocence of the defendant was determined. The trial judge ruled on matters of evidence, instructed the jury on the law, ensured that the procedural rules were adhered to and, in general, supervised the conduct of the trial. Often, the trial judge sat as a fact-finder or juror, and decided a defendant's guilt or innocence when he waived his right to a jury trial.

As a trial judge for many years, I have had the opportunity to observe many changes in the judicial system, reflecting issues addressed by the Supreme Court since the late 1950's. The most extensive of these changes have involved the rights of the accused. Even though this expansion of rights has been based on sound judicial reasoning, the result has been an increased workload for the trial judge, including a greater number of pre-trial and post-trial motions that the trial judge must adjudicate.

Search and Seizure of Evidence

The Fourth Amendment to the U.S. Constitution protects "the rights of the people to be secure in their person, houses, papers and effects against unreasonable searches and seizures." This amendment requires federal courts to exclude from a trial evidence taken without proper search and seizure warrants. However, it was not until 1961 that the Supreme Court extended this exclusionary rule by prohibiting state courts from using illegally obtained evidence in a trial, *Mapp v. Ohio,* 367 U.S. 643, (1961).

In *Mapp,* the police forceably entered the apartment of Dolree Mapp without benefit of a search warrant while looking for someone else, and seized pornographic material. Following a trial, Mapp was convicted and sentenced. Her conviction was upheld through both state and federal court appeals until the Supreme Court accepted her case for argument.

A majority of the justices held that a person is entitled to be secure "against unreasonable searches and seizures" whether the case began in a federal or a state court, and that "no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized" (Fourth Amendment).

In 1963 the Supreme Court coined the phrase "fruit of the poisonous tree," which has become a familiar expression. In *Wong Sun v. U.S.,* 371 U.S. 471 (1963), a divided court ruled that information obtained from one who has been illegally detained cannot be used in a subsequent case because it is the "fruit" of the officer's unlawful action.

Application of this case has given rise to numerous guidelines that must be stringently observed. Unless

A trial judge often must devote more time to research than to court time, studying relevant court precedents, legal opinions and briefs filed by attorneys. Here, in her chambers, District of Columbia Superior Court Judge Iraline G. Barnes prepares for an upcoming trial.

these requirements are met, evidence that may be essential to a conviction must now be excluded.

Right to Counsel

Today we take for granted that a person accused of a crime will be represented by an attorney. In fact, if he cannot afford an attorney, one will be appointed by the court to represent him. This was not always the rule. Until 1963, state courts were not required to appoint counsel in all criminal cases.

The right to counsel was established in the famous case of Clarence Earl Gideon. Gideon was arrested in Florida on a felony charge, having allegedly broken and entered a poolroom with intent to commit a misdemeanor. The trial court denied his request to appoint cousel on the grounds that under Florida law only a person charged with a capital offense (e.g., murder) was entitled to counsel.

In a decision that reverberated throughout the fifty states, the U.S. Supreme Court held that the 14th Amendment obligated states to guarantee the fundamental and essential provisions of the Bill of Rights to ensure a fair trial. This included the Sixth Amendment right "to a speedy and public trial, by an impartial jury...and to have the assistance of counsel for his defense."

This right to counsel now given to defendants in the criminal process has proven to be both costly and time consuming. Not only must the system provide free assistance to those who cannot afford it, but it must make certain the assistance is effective. An individual who has not had proper and adequate representation, in effect, has had no representation, and therefore must receive a new trial.

The Rights of the Accused

When an individual is arrested and charged with a crime, the arresting authority usually conducts an investigation that includes questioning the defendant. In many cases the defendant has been "persuaded" to make a statement and "confess" to his misdeeds. This confession is then introduced as evidence against the defendant at his trial.

There is absolutely nothing wrong with an individual's making a "clean breast" of his criminal activity and thereby taking the first step toward atoning for his crimes. However, the "confession" must be "voluntary," taken without threats or coercion. When a person makes a statement, he must be familiar with his constitutional rights, or his "confession" is meaningless and cannot be considered voluntary.

Prior to 1966 there were no clear-cut guidelines for the states to follow. Such was the setting for the now famous case of *Miranda v. State of Arizona,* 384 U.S. 436 (1966). Earnest A. Miranda was arrested and taken to a special interrogation room where he signed a confession. This document contained a paragraph stating that Miranda confessed voluntarily with full knowledge of his legal rights and with the understanding that any statement made by him could be used against him. However, he was not advised of his rights under the Constitution.

At his trial his confession was admitted as evidence, and he was convicted of kidnapping and rape. On appeal to the Arizona Supreme Court, his conviction was affirmed. However, the U.S. Supreme Court reversed his conviction, holding that a suspect must be advised of the charges against him, his right to remain silent and his right to an attorney.

Since the *Miranda* decision the Court has enumerated several factors to be considered in determining whether a confession is voluntary and whether a person is aware of his constitutional rights. Some of these factors include the age of the accused, his social and educational background, the length of the interrogation and the presence or absence of an attorney. Thus, there is no longer a burden placed on a defendant to speak or have his silence construed as an admission of guilt.

Identification

In the course of a criminal trial, the prosecutor identifies the parties through the testimony of witnesses. Before the defendant's guilt can be determined as a matter of law, there must be evidence that a crime was committed and that the defendant is the person who committed that crime. All of this must be proved "beyond a reasonable doubt."

Consequently, the identification during the court proceedings of the defendant as the perpetrator of the criminal act is extremely important. Any attempt on the part of the police or the prosecution to influence the witness to identify the defendant is cause for a dismissal of the charges or at least for a new trial with the tainted identification excluded from the evidence.

In the case of *U.S. v. Wade,* 388 U.S. (218), the Supreme Court established guidelines to protect defendants. Billy Joe Wade was arrested for robbery of a federally-insured bank, and counsel was appointed to represent him. Without notice to his attorney, an FBI agent arranged for two bank employees to observe a lineup of the accused and five or six other prisoners.

Those in the lineup, like the robber, were required to wear strips of tape on their face and to say, "Put the money in the bag." The bank employees identified the accused as the robber. At the defendant's trial in the U.S. District Court for the Eastern District of Texas, both employees again identified the accused on direct examination. Defense counsel's request to strike the courtroom identification was denied, and the accused was convicted. The U.S. Court of Appeals revers-

ed the conviction because defense counsel had not been present at the lineup in violation of the Sixth Amendment.

If witnesses described the criminal actor, then all persons in the lineup must be similar in height, weight, coloring, etc. The presence of the defendant's attorney would have ensured that the lineup was composed of representative persons and that it was not suggestive.

In the case of *U.S. v. Wade,* the Supreme Court held that under the Sixth Amendment the accused was entitled to the aid of counsel at the lineup. However, equally important, the Court held that the defendant's Fifth Amendament rights against self-incrimination were not violated by the lineup itself or by requiring the accused to wear strips of tape on his face and speak the words allegedly uttered by the robber. Nor was the presence of counsel required at the analysis of the accused's fingerprints, blood sample, clothing, hair and the like.

Workload

Certainly these are not the only cases that have affected the trial judge's workload, but they are symbolic of the growth and recognition of the rights of the accused. There is nothing more horrendous than to convict an innocent person. However, the new requirements have placed a burden on the trial judge that coincides with an increasing case load.

In every case the defendant today is advised of his rights, initially by the police through the "Miranda Warnings," and then at each step of the proceedings through trial and post-trial motions.

At the arraignment the defendant is advised of his right to file pre-trial motions: that is, motions to suppress physical evidence obtained without a legal search warrant or evidence obtained through illegal coercion *Mapp;* motions to challenge the probable cause for his arrest; motions regarding his alleged oral or written statements *Wong Sun;* motions regarding the identification made by his accusers *Wade;* and motions regarding his right to counsel *Gideon.* These motions are usually lengthy and time consuming, but they enable a trial to be conducted in an atmosphere that is free from taint or error.

The trial judge is placed in a position of directly viewing the treatment of an accused by the police. Needless to say, this type of role as overseer of police practices is in conflict with the public's demand that judges be more receptive to the agony suffered by the victims and their families. Recognizing this concern, the Supreme Court has tried to balance these competing interests. In the case of *Brewer v. Williams,* 430 U.S. 387 (1977), a statement designed to elicit information from a suspect was found to be in violation of the suspect's right to counsel since proceedings against the suspect had begun and the police had agreed not to interrogate the suspect without his attorney's being present. On the other hand, a statement taken in violation of the *Miranda* warnings may be used for indictment purposes, although it is not admissible as evidence, *Harris v. New York,* 401 U.S. 222 (1971).

The growth and interpretation of the law are fluid, constantly expanding or changing. Each Supreme Court justice brings to the bench an individual philosophy that will have an impact on society for future generations. Each of these changes also affects our trial judges, ever increasing their responsibilities.

As the workload of the trial judge grows, an increase in expenses to be borne by the judicial system can also be expected. The Voluntary Defenders Office represents indigent defendants. In 1981, there were more than 10,000 cases in the common pleas court and 60,000 cases in the municipal court. The Defenders Office represented more than 50 percent of those cases. In addition, in those instances in which there was a conflict of interests, court-appointed counsel was needed in more than 3,000 cases. Payments for court-appointed attorneys during fiscal year 1982 exceeded $2 million. However, it is certain that the protection of one's rights cannot and should not be measured by the cost or the time expended.

Therefore, it can be readily seen that the role of the trial judge has been expanded to cover all contingencies that would prevent a fair trial. The adage that "it is far better to acquit 99 guilty persons rather than convict one innocent man" is a reality in our judicial system.

How a Case Reaches the Supreme Court

While there are certain cases that can be brought directly to the Supreme Court, the majority of cases are brought on appeal. If either party in a case is unhappy with the decision of a lower court, it has the right to appeal that decision to a higher court. An appeal is not a new trial, but rather a reexamination of the evidence, procedures and legal or constitutional principles on which the decision was based in the previous trial.

Only a very small percentage of cases appealed are considered by the Supreme Court. During its 1976-77 term, the Court received petitions for 4,731 cases, yet agreed to hear oral arguments for only 176. Generally speaking, the Court will be inclined to hear a case if it involves a basic constitutional principle, an important question of federal law or a conflict between state and federal law. Appeals are brought to the U.S. Supreme Court from the highest courts in each state or from lower federal courts. The diagrams below illustrate these two paths by which a case reaches the Supreme Court.

From State Supreme Court
Gideon v. Wainwright

Accused of a crime
June 1961—Clarence Earl Gideon was arrested and charged with breaking and entering the Bay Harbor Poolroom in Panama City, Florida.

↓

Trial in State Circuit Court
1961—Gideon was too poor to afford a lawyer, but his request for a court-appointed lawyer was rejected. Judge Robert L. McCrary cited Florida state law and the 1942 U.S. Supreme Court decision in *Betts v. Brady*. Gideon served as his own lawyer, but lost the case. He was found guilty and given the maximum five-year sentence.

↓

Appeal to the State Supreme Court
October 1961—The Supreme Court of the State of Florida denied Gideon's petition of appeal. It upheld the lower court's ruling that there was no legal requirement to appoint a lawyer for Gideon.

↓

Appeal to the United States Supreme Court
June 1962—The U.S. Supreme Court agreed to hear the *Gideon* case in its next session.

June 1962—The Supreme Court appointed Abe Fortas, a prominent Washington attorney, to represent Gideon. Despite its own *Betts v. Brady* decision, the Supreme Court had traditionally appointed lawyers for poor defendants.

January 1963—Oral arguments were heard between Abe Fortas and Florida assistant attorney General Bruce Jacob. Jacob.

↓

The Supreme Court Decides
March 1963—The Court rules in favor of Gideon, holding that he was entitled to a court-appointed lawyer. They directed the State of Florida to give Gideon a new trial and to appoint a lawyer to represent him. The greater effect was that all persons would now be guaranteed a lawyer.

August 1963—Gideon was represented by a court-appointed lawyer at a new trial in the Circuit Court of Florida. He was found not guilty.

From Federal District Court
Brown v. Board of Education

"My Rights Have Been Violated"
September 1950—An eight-year-old black student named Linda Brown was denied admission to an all-white elementary school in Topeka, Kansas.

↓

Trial in Federal District Court
February 1951—Her father, Oliver Brown, and 12 other black parents sued the city's Board of Education in the United States District Court. The case was officially titled *Brown v. Board of Education of Topeka, Kansas.*

↓

Appeal to the United States Supreme Court
While many cases must be appealed from district court to the court of appeals, this case was appealed directly to the Supreme Court.

June 1952—The Supreme Court agreed to hear the Brown case.

December 1952—Arguments were heard from lawyers for both sides. However, the Court was divided and unable to arrive at a decision.

December 1953—A year later, arguments were again heard for both sides. During that time, a significant change had occurred on the Court. Chief Justice Fred Vinson had died in September and President Eisenhower had appointed Earl Warren to replace him.

↓

The Supreme Court Decides
May 1954—By a 9 to 0 vote the Supreme Court overruled the district court's decision. It stated that segregated schools were unconstitutional because segregation "deprives children of the minority group of equal educational opportunities." It nullified the "separate but equal" principle of the 1896 *Plessy v. Ferguson* case.

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The State of Criminal Justice

Warren Burger

Warren Burger is the 15th Chief Justice of the United States. A graduate of the University of Minnesota Law School, Chief Justice Burger was nominated in 1969 by President Richard Nixon to fill the vacancy on the Court bench. Chief Justice Burger has been especially concerned that Supreme Court decisions that are intended to provide additional protection for the accused often hinder law enforcement officials and the courts in their roles of protecting society and administering justice.

This article is excerpted from the chief justice's State of the Judiciary Address delivered before the American Bar Association on February 8, 1981. In the article, Chief Justice Burger maintains that deterrence, in the form of swift and strict punishment, is the best method of attacking our crime problem.

I begin by reminding ourselves that under our enlightened Constitution and Bill of Rights, whose bicentennials we will soon celebrate, we have established a system of criminal justice that provides more protection, more safeguards, more guarantees for those accused of crime than any other nation in all history. The protective armor we give to each individual when the state brings a charge is great indeed. This protection was instituted—and it has expanded steadily since the turn of this century—because of our profound fear of the power of kings and states developed by an elite class to protect the status quo—their status above all else—and it was done at the expense of the great masses of ordinary people.

Two hundred years ago we changed that. Indeed, in the past 30 or 40 years we have changed it so much that some now question whether the changes have produced a dangerous imbalance.

I put to you this question: Is a society redeemed if it provides massive safeguards for accused persons including pretrial freedom for most crimes, defense lawyers at public expense, trials and appeals, retrials and more appeals—almost without end—and yet fails to provide elementary protection of its law-abiding citizens? I ask you to ponder this question as you hear me out.

The *New York Times* recently reported that one documented study estimated that the chances of any person arrested for a felony in New York City of being punished in any way—apart from the arrest record—were 108 to 1! And it is clear that thousands of felonies go unreported in that city as in all others.

For at least 10 years many of our national leaders and those of other countries have spoken of international terrorism, but our rate of day-by-day terrorism in almost any large city exceeds the casualties of all the reported "international terrorists" in any given year.

Why do we show such indignation over alien terrorists and such tolerance for the domestic variety?

Must we be hostages within the borders of our own self-styled, enlightened, civilized country? Accurate figures on the cost of home burglar alarms, of three locks on each door—and sadly, of handgun sales for householders—are not available but they run into hundreds of millions of dollars.

We must not be mislead by cliches and slogans that if we but abolish poverty crime will also disappear. There is more to it than that. A far greater factor is the deterrent effect of swift and certain consequences: swift arrest, prompt trial, certain penalty, and—at some point—finality of judgment.

It is clear that there is a startling amount of crime committed by persons on release awaiting trial, on parole, and on probation release. It is not uncommon for an accused to finally be brought to trial with two, three or more charges pending. Overburdened prosecutors and courts tend to drop other pending charges when one conviction is obtained. Should we be surprised if the word gets around in the "criminal community" that you can commit two or three crimes for the price of only one and that there is not much risk in committing crimes while awaiting trial?

Deterrence is the primary core of any effective response to the reign of terror in American cities. Deterrence means speedy action by society, but that process runs up against the reality that many large cities have either reduced their police forces or failed to keep them in balance with double-digit crime inflation.

A first step to achieve deterrence is to have larger forces of better trained officers. Thanks to the FBI Academy we have the pattern for such training.

A second step is to re-examine statutes on pre-trial release at every level. This requires that there be a sufficient number of investigators, prosecutors, and defenders—and judges—to bring defendants to trial swiftly. Any study of the statistics will reveal that "bail crime" reflects a great hole in the fabric of our protection against internal terrorism.

Many enlightened countries succeed in holding

criminal trials within four to eight weeks after arrest. First nonviolent offenders are generally placed on probation, free to return to a gainful occupation under close supervision. But I hardly need remind this audience that our criminal process often goes on two, three, four or more years before the accused runs out of all the options. Even after sentence and confinement, the warfare continues with endless streams of petitions for writs, suits against parole boards, wardens and judges.

So we see a paradox—even while we struggle toward correction, education and rehabilitation of the offender, our system encourages prisoners to continue warfare with society. The result is that whatever may have been the defendant's hostility toward the police, the witnesses, the prosecutors, the judge and jurors—and the public defender who failed to win his case—those hostilities are kept alive. How much chance do you think there is of changing or rehabilitating a person who is encouraged to keep up years of constant warfare with society?

What I suggest now—and this association with its hundreds of state and local affiliates can be a powerful force—is a "damage control program." It will be long; it will be controversial; it will be costly—but less costly than the billions in dollars and thousands of blighted lives now hostage to crime.

To do this is as much a part of our national defense as the Pentagon budget.

Sometimes we speak glibly of a "war on crime." A war is indeed being waged but it is a war by a small segment of society against the whole of society. Now a word of caution: That "war" will not be won simply by harsher sentences; not by harsh mandatory minimum sentence statutes; not by abandoning the historic guarantees of the Bill of Rights. And perhaps, above all, will not be accomplished by self-appointed armed citizen police patrols. At age 200, this country has outgrown the idea of private law and vigilantes. Volunteer community watchman services are quite another matter.

Should you look at the records you will find that the 300,000 persons now confined in penal institutions are heavily weighted with offenders under age 30. A majority of them cannot meet minimum standards of reading, writing and arithmetic. Plainly this goes back to our school systems. A sample of this was reflected in a study of pupils in a large city where almost half of the third graders failed reading. This should not surprise us, for today we find some high school graduates who cannot read or write well enough to hold simple jobs.

Now turn with me to a few steps which ought to be considered:

(1) Restore to all pretrial release laws the crucial element of dangerousness to the community based on a combination of the evidence then available and the defendant's past record, to deter crime-while-on-bail;

(2) Provide for trial within weeks of arrest for most cases, except for extraordinary cause shown;

(3) Priority for review on appeal within eight weeks of a judgment of guilt;

(4) Following exhaustion of appellate review, confine all subsequent judicial review to claims of miscarriage of justice; and finally;

A. We must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short-term benefits—a "winning of battles while losing the war."

B. Provide for generous use of probation for first nonviolent offenders with intensive supervision and counseling and swift revocation if probation terms are violated.

C. A broad scale of physical rehabilitation of the penal institutions to provide a decent setting for expanded educational and vocational training.

D. Make all vocational and educational programs mandatory with credit against the sentence for educa-

Well, Junior, I guess you could say that the Supreme Court is a cross between King Solomon, Mister Rogers and the great and mighty Oz.
U. S. SUPREME COURT

tion progress—literally a program to "learn the way out of prison," so that no prisoner leaves without at least being able to read, write, do basic arithmetic and have a marketable skill.

E. Generous family visitation in decent surroundings to maintain family ties, with rigid security to exclude drugs or weapons.

F. Counseling services after release paralleling the "after-care" services in Sweden, Holland, Denmark and Finland. All this should be aimed at developing the prisoner's respect for self, respect for others, accountability for conduct and appreciation for the value of work, of thrift and of family.

G. Encourage religious groups to give counsel on ethical behavior and occupational adjustment during and after confinement.

This illness our society suffers has been generations in developing, but we should begin at once to divert the next generation from the dismal paths of the past, to inculcate a sense of personal accountability in each school child to the end that our homes, schools and streets will be safe for all.

Know the Criminal Justice Process

The articles you have just read emphasize your legal rights and responsibilities while giving you a basic understanding of the law. [illegible] in order to really understand the criminal law process [illegible]d to know the vocabulary that goes with it. This exer[illegible] help you do that.

Match the letter of the [illegible] to the number of the definition that should go with it.

____A. arraignment
____B. arrest
____C. defendent
____D. felony
____E. grand jury
____F. guilty
____G. indictment
____H. interrogation
____I. lawyer
____J. not guilty
____K. preliminary hearing
____L. probable cause
____M. rights
____N. sentencing
____O. twelve

1. The point at which a person enters the criminal justice system.
2. Must be read upon arrest.
3. The arrestee is fingerprinted and photographed as part of this procedure.
4. What the arrestee is called after a formal complaint is filed.
5. Can be court-appointed if the defendant cannot afford one.
6. Any crime which carries a possible sentence of more than one year in prison.
7. The point at which the government is required to present evidence that links the defendant to the crime.
8. Reasonable grounds for justifying legal proceedings against a person.
9. Proceedings to decide whether there is probable cause present.
10. Formal accusation of an offense or crime.
11. The point where the defendant enters his/her plea.
12. The plea entered when the defendant admits to committing the crime(s) charged.
13. The plea entered by a defendant exercising his/her right to a jury trial.
14. The number of jurors selected to hear a case.
15. The determination of punishment if found guilty.

Structure of the Judicial Branch

FEDERAL COURTS

United States Supreme Court
Washington, D.C.

Tries lawsuits between the states. May review decisions of federal appellate courts and specialized federal courts. May review decisions of the highest court of appeals in a state if a constitutional question or federal law is involved.

U.S. Court of Appeals

Eleven courts, often called circuit courts, sitting in each of 10 judicial circuits and the District of Columbia. Hear appeals from U.S. district courts and review decisions of federal administrative agencies.

U.S. District Courts

Approximately 90 courts sitting in all parts of the United States and in Puerto Rico and the Virgin Islands. Try both civil and criminal cases and serve as bankruptcy and admiralty courts as well. May review decisions of federal administrative agencies.

Tax Court of the United States
Washington, D.C.

Hears cases arising under federal tax laws.

U.S. Court of Claims
Washington, D.C.

Hears suits against the U.S. government. Evidence may be given before court commissioners at various locations throughout the country.

STATE COURTS

No two states have identical court systems, but all are similar in their general outlines. This diagram shows the profile of an imaginary but typical system of state and local courts.

State Supreme Court

Hears appeals from all inferior courts. Court of last resort except for constitutional matters, which may be appealed to U.S. Supreme Court.

Intermediate Appellate Courts

(In some states only.)
Hear appeals from the decisions of courts of general and special jurisdiction and from criminal courts.

Trial Courts

District, County or Municipal Court
Has general jurisdiction: hears civil suits and criminal cases.

Juvenile or Family Court
Hears domestic juvenile delinquency and youthful offender cases.

Probate Court
Probates wills and hears claims against estates.

Criminal Court
Hears criminal cases.

LOCAL COURTS

Local Courts
(Cases heard in these courts frequently cannot be appealed. Names may vary according to locality.)

Traffic Court
Small Claims Court
Police Court
Justice of the Peace

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Two Views: Should Congress Control the Supreme Court?

In 1981 Congress was considering several bills that would limit the powers of the Supreme Court. For example, one bill declared that the Supreme Court could not use busing to achieve racial integration in schools. The authors of the bill argued that the Court had become too activist and was overreaching its constitutional mandate. Proponents of busing and of other reforms made by the Court argued that the Court had acted within its legitimate authority. Here are two views of the issue, published in April 1981 editions of the Washington Post.

The Court Must Stay Supreme

Representative Robert W. Kastenmeier (D-Wisc.)

Congress and the nation are now facing an attack on the vital role and nature of the Supreme Court the likes of which has not been seen since President Franklin Delano Roosevelt's court-packing plan in the 1930's. The current attack is even more serious because it strikes at the independence and integrity of the Supreme Court's most basic function—to review the constitutionality of state laws and actions. This current assault is embodied in 13 bills pending in the House, which are designed to eliminate the jurisdiction of the federal courts to consider any cases relating to state laws on prayer in public schools, abortion or school desegregation plans.

Basically, the proponents of these bills are saying, "We don't like the way the federal judiciary has resolved these issues, so we're going to take away their power to make such rulings." This attitude is particularly pernicious because it is focused on three of our most precious liberties—the separation of religion and the state, the right to equal public education free of racial bias and a woman's right to personal liberty and privacy. The Supreme Court has been on the front lines on these issues.

Whatever differences one may have with the Court, its role, since the enactment of the Constitution, has been to be the final arbiter of fundamental questions, the articulator of rights, the last best hope for the maintenance of our freedoms. It has served us well. To now cut away at the Court's authority cannot be in anyone's interest.

The basic questions facing the Judiciary Committee are: Does Congress have the power to withdraw federal court jurisdiction over constitutional rights cases? And if so, are there good policy reasons to do so? I believe that the answer to both of these questions is no.

At least two arguments suggest that the legislation is constitutionally flawed. First, there is the "essential role" argument, which asserts that Congress does indeed have power to regulate the Court's jurisdiction, but not to the degree that such regulation impinges on the essential role of the Court to maintain the supremacy of the Constitution's review of the constitutionality of state laws and actions. Second, there is a relevant due process/equal protection issue. An admitted premise of this legislation is that by relying on the state courts to determine final constitutional law, persons who are similarly situated and are asserting the same constitutional right may well be treated differently in different jurisdictions, thus violating the tenet of equal protection under the law. For the first time, the Supreme Court would have no authority to rectify conflicting state court judgments.

There are also policy objections to the legislation. First, the law is not a static text but an evolving set of principles, ideas and judgments. An end of Supreme Court jurisdiction for any of these types of cases would freeze federal constitutional law in the area, eliminating the possibility of aggreived citizens seeking further development of the law. To cut off a hearing of important issues cannot be a reasonable public policy goal.

Also, Congress must not offend or jeopardize the legitimate prerogatives of the other two equal branches of government. Inhibiting the ability of the federal courts to deal with constitutional questions suggests that the judicial branch is not competent to consider such questions.

Further, as the Carter Justice Department suggested, this legislation would conflict with the public interest in affording a definitive and nationwide resolution of issues of constitutional magnitude.

It is no doubt healthful to review the nature and role of our nation's institutions. However, to attempt to emasculate the vital function of an institution as fundamental to our liberty as the federal judiciary can have only disastrous consequences.

The Constitution, Not the Court, Is Supreme

Senator Orrin G. Hatch (R-Utah)

Representative Robert W. Kastenmeier contended that federal courts must remain supreme. His purpose for writing was to bolster his viewpoint that the Supreme Court is immune from congressional review. On the contrary, the Constitution must remain supreme. That

inspired document specifically obligates Congress to check the judiciary when it steps beyond constitutional limitations. The majesty of the constitutional framework is that no branch is permitted to become supreme.

The drafters of the Constitution carefully composed Article III to place with Congress the responsibility for ensuring that personal liberties not be endangered by an errant or arrogant judiciary. Section 2 lists the kinds of cases the Supreme Court has the exclusive right to decide and then proceeds: "In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, with such exceptions, and under such regulations, as the Congress shall make."

With this language, the Constitution charged Congress to regulate which cases the federal courts could hear on appeal from state courts. A legislative decision to make an exception in federal court jurisdiction would give effect to the last article of the Bill of Rights, which reserves for the states and the people all matters not specifically delegated to the national government by the Constitution. Disputes would be settled by more accountable state and local decision-makers, rather than by national mandate.

Even Alexander Hamilton, known for his predisposition to favor centralized governance, reassured those who feared the potential reach of the federal judiciary by affirming that "the national legislature will have ample authority to make such exceptions and prescribe such regulations as will be calculated to obviate or remove these inconveniences." In Hamilton's estimation, a mere "inconvenience" would warrant use of the specific constitutional check on the federal judiciary.

Substantial groups who feel the Supreme Court has abridged their rights are now petitioning Congress to recognize the constitutional role of the Court. These groups contend that under the guise of interpretation, the Supreme Court has been amending the Constitution to jeopardize their rights. For instance, a single constitutional amendment, the 14th, has been stretched by the Court into a number of controversial decisions. That single amendment has been employed to wrest from states and localities the decision of which school a child should attend, to permit programs favoring one race over another and to reverse more than 150 years of exclusive state discretion over apportionment of congressional districts. On occasion, the tribunal has not even bothered to interpret the Constitution itself, but only its penumbrae, to declare that children are not persons before birth. Moreover, only a constitutional amendment by the prescribed Article V method would be sufficient to alter these doctrines promulgated by five out of nine judges. Fortunately, the approval of two-thirds of Congress and three-fourths of the states is not the only way to cause five judges to reconsider their actions. In weighing whether to employ its authority to protect individual rights, Congress need not rely solely on these errant opinions.

On one occasion, the Court branded a course of conduct it had pursued for nearly a century "an unconstitutional assumption of power by the courts of the United States, which no lapse of time or respectable array of opinion should make us hesitate to correct." If the Court, by its own admission, had unconstitutionally assumed authority for almost 100 years, Congress is justified in asking what it might not have yet confessed.

When Congress did withdraw appellate jurisdiction, the Supreme Court itself acknowledged Congress' authority by immediately dismissing the questioned case. This was the famous *ex parte McCardle* case concerning a habeas corpus petition following the Civil War. The court stated conclusively: "We are not at liberty to inquire into the motive of the legislature. We can only examine into its power under the Constitution, and the power to make exceptions to the appellate jurisdiction of this court is given by express words." The Supreme Court itself would seem to take issue with Representative Kastenmeier's reading of the exceptions clause.

Before deleting from the Constitution this check on federal court supremacy, the congressman should recall that the Supreme Court once ruled that a black man is not a person (similar to the ruling about unborn children) and could be regarded as property. More recently, the Court decided that Japanese Americans could be incarcerated during World War II simply on the basis of their national origin. If a future Court wanted to return to these precedents, we would all be more secure knowing that Congress could halt the legal abrogation of rights.

The federal judiciary has been courting constitutional disaster by reading its own predilections into the nation's foundational document. The Supreme Court is the body charged with policing the bounds drawn by the Constitution. When the policeman violates the law, a higher authority must undertake to protect the freedoms of the citizenry. The Constitution is that higher authority, and it has outlined the means to prevent such overreaching. Jefferson provided the most graphic expression for this dilemma: "It is jealousy and not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power.... In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

The Constitution is supreme, not the Court. We should all be grateful that the Constitution includes checks to ensure that individual liberties do not fall prey to any single ambitious branch of government.

Court Rulings Hinged on the Middle Faction

Fred Barbash

Fred Barbash is the Washington Post *columnist who covers the Supreme Court. In the following article, which appeared in the July 4, 1982 issue of the* Washington Post, *Mr. Barbash discusses the make-up of the current Supreme Court and looks at some of the Court's recent decisions.*

The occasion was oral argument before the Supreme Court on a major death penalty case. Justice William H. Rehnquist, the arch-conservative, asked a lawyer for the state of Oklahoma whether it wouldn't be cheaper "from the taxpayers' point of view" to execute the defendant than to confine him for years of psychiatric treatment.

From the other side of the bench came the familiar growl of Justice Thurgood Marshall, the arch-liberal: "Well," Marshall said sarcastically, "it would be cheaper just to shoot him when you arrested him, wouldn't it?"

Marshall and Rehnquist are in hostile camps at the Court, and, during the term that ended July 9, 1982, the camps were perhaps as hostile as they've ever been: Justice Marshall and Justices William J. Brennan Jr. and Harry A. Blackmun on one side and on the other, Chief Justice Warren E. Burger and Justices Rehnquist and Sandra D. O'Connor. The three others, Byron R. White, John Paul Stevens and Lewis F. Powell Jr., shifted between the poles, deciding which would prevail.

What the Court did this term depended on which coalition seized control. Sometimes, two courts seemed to be at work.

One court broke new ground in federal-state relations by imposing important restrictions on federal court intervention in state criminal proceedings and property tax controversies.

Another court seemed to revive the federal interventionism of the 1960's by telling legislatures that they cannot deny a free public education to illegal aliens, and by telling school boards that they risk being hauled into federal court for censoring books in their school libraries.

One side won major victories by ruling that the states must have stronger evidence of abuse or neglect before removing children from parents and that minorities do not need "smoking gun" evidence of voting abuses to prove discrimination.

The other succeeded in giving police nearly blanket authority to search private belongings in automobiles; in awarding absolute damages suits to the president and in telling school systems they do not have to go overboard in providing special schooling for handicapped children.

The votes on many of the major cases were close. That means the decisions are unstable. They may survive a year or a decade, depending on who becomes president and whom he appoints to the Court.

The Court now includes appointees of six presidents, starting with Dwight D. Eisenhower and excepting Jimmy Carter.

The Court comprises a former majority leader of the Arizona Senate (O'Connor); a former president of the Richmond school board (Powell); a one-time leader of the NAACP (Marshall); a former Nixon Justice Department official (Rehnquist); a former Harvard mathematics major (Blackmun); an antitrust lawyer (Stevens); a Rhodes scholar who played professional football (White); and a former New Jersey superior court judge (Brennan).

The Court's record is clear on individual cases, but collectively its record in the difficult cases this term was a smorgasbord guaranteed to give lawyers whatever quote they need for whatever point they're arguing.

Aliens "by definition, are those outside the community," the court said in a case upholding California's exclusion of legal aliens from jobs as probation officers. But when issuing the ruling on illegal aliens and education, the Court said, "We cannot ignore the social costs borne by our nation when select groups are denied the means to absorb the values and skills upon which our social order rests."

In a ruling which upheld federal intervention in cases involving termination of parental right, the justices said, "When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." But when it resolved a second case by ruling against a federal role, the Court said the use of federal *habeas corpus* intervention "should be reserved for those instances in which the federal interests in individual liberty is so strong that it outweighs federalism and finality concerns."

Extraordinary facts—the heartbreaking plight of the mentally retarded, the sickening crime of exploiting young children in sex films, a blatant abuse of power by the courts of Mississippi—occasionally permitted solid majorities or unanimity on controversial social issues.

In unanimous votes, the Court extended constitutional rights to the institutionalized mentally retarded, threw out a damages award against the NAACP for its political boycott in Port Gibson, Miss., and relaxed the First Amendment to allow a broad attack on child pornography.

The split at the Court is not new, but O'Connor's arrival seemed to polarize the Court further.

She came with her own conservative agenda of judicial restraint, most pronounced in cases involving confrontations between federal and state power. Thus, when the Court split on such social issues as defendants' rights, she sided with Burger and Rehnquist most of the time.

Much of her writing struck one note: states' rights.

Federal *habeas corpus*, which allows judges to review state criminal incarceration at any time, is "federal intrusion," she wrote in one of her opinions restricting it.

Federal court rulings on whether state unemployment taxes may be imposed on religious schools constitutes "federal court interference," she wrote in another case.

A decision striking down Idaho's method of taxing corporations, she said in dissent, "has straight-jacketed the states' ability" to develop fair systems of corporate taxation.

The crusade clearly got to the liberal wing of the Court. Brennan reached his conclusion early in the term. "The bloom is off the rose," he said as he dissented from one of her rulings, accusing her of straying from an earlier opinion she wrote in *Rose vs. Lundy*.

By the end of the term, Blackmun, Marshall and Brennan openly accused her of purposely "mischaracterizing" a lower court ruling to reach a desired pro-business result in a sex discrimination case pitting the Ford Motor Co. against the Equal Employment Opportuniy Commission.

She, in turn, took them to task, in the genteel fashion of the Court, for attacking her character. "We decline the opportunity to address further this ad hominem *personal* argument," she responded in a footnote in the same case.

There was one major exception to her efforts on behalf of judicial restraint. She wrote the decision declaring unconstitutional the exclusion of men from the Mississippi University for Women nursing school. Womens' rights activists considered the language of the decision an important reinforcement of the law against sex discrimination.

In other highlights of the Court's term, the justices:

- Made it clear in several cases that it disapproves of making one person responsible for the misconduct of others. In two cases involving this concept of "vicarious liability," the Court said that contractors in Pennsylvania cannot be punished for job discrimination committed by a union hiring hall and that NAACP protesters in Mississippi cannot be punished for violence not directly tied to them. It also said a criminal cannot be put to death unless he is directly involved in a murder.
- Further carved out a special place in the law for children. In the "kiddie porn case," the illegal aliens case and the federal intervention in child custody case, the Court justifies its decision on the grounds that special protections are due the young. Similarly, it permitted prayers on public college campuses but refused to retreat from its ban on prayer in public grade school, in part because the students are children.
- Reaffirmed what had been an uncertain "right to access" to criminal trial, which some observers hope can be expanded into a general right of access to all kinds of governmental activities and proceedings.
- Continued to forge novel concepts of how to interpret the Congress. In a case granting a private right to sue under commodities futures laws, the Court said Congress indicated that it approved of such a right by remaining silent in the face of lower court rulings establishing it. Congress would have done something about those rulings if it had disapproved, the Court ruled.

The Court as Policy Maker: Desegregating Public Schools

"To consider the Supreme Court of the United States strictly as a legal institution is to underestimate its significance in the American political system. For it is also a political institution, an institution...for arriving at decisions on controversial questions of national policy."

Robert A. Dahl

"No single (Supreme Court) decision has had more moral force than Brown; few struggles have been more significant than the one for racial integration of American life. Yet school desegregation also may be the most political item on the Court's agenda."

J.H. Wilkinson

Prior to 1954, the segregation of black and white school children in much of the United States was not only legal, but approved by government at both the federal and state levels. Seventeen states and the District of Columbia required segregated schools by law. Four additional states permitted segregation by local option. In 1954 almost eleven million school children (8.2 million white, 2.5 million black) attended segregated schools. That number accounted for 40 percent of the nation's public school enrollment.

The segregation of the races in schools and other public facilities was a practice that had been in effect for many years. In the South it was an outgrowth of the years in which blacks had been slaves to white landowners. Even after the Civil War ended and slavery was outlawed, racism (prejudice based on race) remained a strong force. Laws requiring the strict separation of races became common. In 1896, a man named Homer Plessy challenged the constitutionality of one such law in a case that reached the Supreme Court *(Plessy V. Ferguson)*. The Court of that era ruled that the Constitution permitted state-imposed segregation as long as "separate but equal" facilities were provided for both races.

The Supreme Court's ruling in *Plessy* remained unchallenged throughout the first half of the 20th century. School facilities for black and white children remained separate, but far from equal. For example, in the mid-1930's in Randolph County, Georgia, $36.66 a year was spent for each white child's education, while only 43¢ a year was spent for the education of each black child. Likewise, in Upson County, Georgia, for every $1.00 of the declared value of black schools, white schools were valued at $2,055.

Six cases concerning the "separate but equal" doctrine as it applied to schools came before the Supreme Court from 1900-1950. However, each of the cases challenged the *equality* of the educational facilities in question, not the fact that the facilities were separate. In several of these cases, the Court solved the matter by ordering white universities and colleges to admit individual black students.

In 1952, however, four cases came before the Supreme Court that challenged the validity of the whole idea of "separate but equal."

Brown v. Board of Education of Topeka

Some have wondered why the Supreme Court agreed to consider the *Brown* case at all. The Court had ruled several times since *Plessy* that the 1896 judgment was constitutional, so many people believed there was no reason to reopen the issue. However, by 1952 several important developments had occurred in America and on the Supreme Court—developments significant enough that the justices deemed the question of school segregation "of obvious importance."

Having recently been involved in a war (in which blacks fought side-by-side with whites), America was engaged in a "cold war" with the Communist bloc, led by the Soviet Union. Among other things, the battle was one for the hearts and minds of the world. The Communist countries got great propaganda value out of the fact that America was a segregated society. The African and Asian nations of the developing world were especially inclined to listen to the Soviets in this regard. Many Americans felt a pressure to remedy the situation if only to combat such propaganda.

The Court too had changed. Many social issues

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had reached the court in the early 20th century, resulting in the establishment of a number of precedents based more on social justice than on strict legal reasoning. Benjamin Cardozo sat on the Supreme Court during this period and explained its decisions as follows:

> When the social needs demand one settlement rather than another, there are times when we must bend symmetry, ignore history and sacrifice custom in the pursuit of other and larger ends. From history and philosophy and custom, we pass, therefore, to the force which in our day and generation is becoming the greatest of them all, the power of social justice....The final cause of law is the welfare of society.

The *Brown* case became the crucial test of the "separate but equal" doctrine handed down in the *Plessy v. Ferguson* decision. In five places—Kansas, South Carolina, Virginia, Delaware and the District of Columbia—lawsuits were begun challenging racial separation in the schools. Although the specific facts in the cases differed, they all charged that the segregation of children by race was a violation of the 14th Amendment's "equal protection" clause.

The Arguments in Brown

The black children and parents who brought suit were represented by attorneys for the National Association for the Advancement of Colored People (NAACP). Chief among the attorneys was Thurgood Marshall, who was later appointed to the Supreme Court by President Johnson.

The NAACP lawyers contended that the 14th Amendment to the Constitution, passed in 1868, was intended "to proscribe (outlaw) all forms of state-imposed racial distinction and give complete equality to the Negro race." Segregated schools, the attorneys maintained, were not equal and could not be made equal; they therefore deprived black children of their constitutional right to "equal protection of the laws." In support of their claim that segregated schools could not be made equal, the NAACP submitted lengthy sociological studies indicating that segregation caused minority children to feel inferior, negatively affected their motivation and impaired their ability to learn.

Thurgood Marshall asked the Supreme Court to declare the "separate but equal" doctrine constitutionally invalid. He said:

> It stands mirrored today as the faulty conception of an era dominated by provincialism, and by the preaching of a doctrine of racial superiority that contradicted the basic concept upon which our society was founded.

Attorneys for the four states and the District of Columbia argued that the 14th Amendment did not

specifically outlaw segregation and therefore it was left to the states' discretion under their "police powers."

James Davis, a famous constitutional lawyer and Democratic nominee for president in 1924, argued for the state of South Carolina. He invoked the doctrine of *stare decisis*, which holds that the court should stand by the precedent it sets in cases which have already been decided. He then cited a 1927 case in which the Supreme Court had held public school segregation to be constitutionally valid.

Davis also attacked the NAACP's sociological evidence, calling it "emotional" and a "category of inflammatory labels."

Based on this first hearing of arguments in 1952, the Supreme Court could not reach a decision. It therefore scheduled the cases to be reargued in the 1954-55 term.

Earl Warren Appointed Chief Justice

By the time the Supreme Court next considered the school desegregation cases, it had a new chief justice, Earl Warren. President Eisenhower had appointed Warren in the midst of the desegregation controversy because of his "middle of the road philosophy." First a prosecutor, then three-term governor of California and Republican vice-presidential nominee, Warren's credentials as a Republican were stronger than his credentials as a judge. But he was to surprise Eisenhower and the rest of the country with his strong personal leadership of the Court. The fifteen years of the "Warren Court" were to become one of the most active and controversial judicial eras in American history, reflected in part by numerous attempts to impeach Warren in order to be rid of him.

Although Eisenhower did not know it, Earl Warren fit the pattern of activist judges described by political scientist Robert Dahl in the late 1950's:

> As Mr. Justice Frankfurter has recently reminded us, a suprisingly large portion of the justices, particularly of the great justices who have left their stamp upon the decisions of the Court, have had little or no prior judicial experience. Nor have the justices-certainly not the great justices-been timid men with a passion for anonymity. Indeed...if justices were appointed for their 'judicial' qualities without regard to their basic attitudes on fundamental questions of public policy, the Court could not play the influential role in the American political system that it does in reality play.

The Brown Case Reconsidered

The school desegregation cases returned to court early in the 1954 term. Much of the debate centered on the intentions of Congress in passing the Fourteenth Amendment.

The Justices wanted to try to learn, by studying the congressional debate of almost 100 years earlier, whether or not it was the legislature's intention to totally eliminate all forms of segregation. While attorneys for the opposing sides took predictably differing positions on the question, the Department of Justice, arguing as an *amicus curiae* or "friend of the court" held that there was inadequate evidence to determine the true intentions of Congress in 1868.

The Dilemma Faced by the Supreme Court

The Supreme Court was faced with the need to make a decision regarding a portion of the Constitution which was unclear in its intent and which yielded strongly differing interpretations. Dahl describes such legal situations as follows:

> Very often...the cases before the Court involve alternatives about which there is severe disagreement in the society, as in the case of segregation...that is, the setting of the case is "political." Moreover, they are usually cases where competent students of constitutional law, including the learned justices of the Supreme Court themselves, disagree; where the words of the Constitution are general, vague, ambiguous, or not clearly applicable; where precedent may be found on both sides; and where experts differ in predicting the consequences of the various alternatives....
>
> If it is true that the nature of the cases arriving before the Court is sometimes of the kind I have described, then the Court cannot act strictly as a legal institution. It must...choose among controversial alternatives of public policy by appealing to at least some criteria of acceptability on questions of fact and value that cannot be found in or deduced from precedent, statute, and Constitution. It is in this sense that the Court is a national policy-maker.

The Supreme Court Decision in Brown

Finally, after long debate, the Court reached a decision. On May 17, 1954, Chief Justice Warren read the opinion to a crowded courtroom. All of the justices were present, even Robert Jackson who had suffered a heart attack in March and was not expected to return to the bench that term. Although earlier reports had indicated sharp disagreement among the justices on the issue, Chief Justice Warren read a unanimous opinion. The fact that the decision was unanimous was a sign to the nation that the justices had united behind their decision and were not likely to back down. It was also an indication of Warren's ability to achieve consensus on a very difficult issue.

The decision of the Supreme Court was that the NAACP attorneys were correct: segregated schools violated the 14th Amendment rights of black children. On that subject the Supreme Court opinion stated:

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.
>
> We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.
>
> We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.

The Nation's Reaction to the Brown Decision

The reaction of the nation was mixed. Some people were pleased, feeling the decision was long overdue. Others felt betrayed by the highest court, which

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they thought had overstepped its authority. Many others did not understand the implications of the decision and waited for time and the court to clarify what was expected of them. Below are excerpts from editorials written on the day of the decision. They reflect the gamut of feelings that surfaced that day.

Papers from segregated states

The Washington Evening Star

There is a witticism to the effect that the law is what the judges say it is, and this segregation ruling lends sturdy vitality to that old saw. In effect, nine men have concluded that segregation in the public schools is a bad thing and have asserted the power to outlaw it....Concern over a dubious assumption of power by the court, however, does not alter the fact that this decision finds much support in wisdom and fairness.

The Birmingham News

This newspaper deeply regrets that the Supreme Court has come to a decision that a segregation of Negro and white students in the public schools is unconstitutional. It has thus overturned...the "separate but equal" doctrine....The *News* believes that the considerations of public interest and states' rights which underlay the superseded decision of 1896 still apply and would better serve progress in racial relations and education.

The Atlanta Constitution

The court decision does not mean that Negro and white children will go to school together this fall. The court itself provides for a "cooling off" period. Not until next autumn will it even begin to hear arguments from attorneys general of the seventeen states involved on how to implement the ruling.... Meanwhile, it is not time for hasty or ill-considered actions. It is no time to indulge demagogues on either side or those who are always ready to incite violence and hatred.... It is a time for Georgians to think clearly. Our best minds must be put to work, not to destroy, but to arrive at constructive conclusions.

Papers from nonsegregated states

The Cincinnati Enquirer

The...opinion...probably will prove to be the most important judicial finding in the field of racial relations in our entire national history. It will work profound social changes in a substantial part of the United States—not confined to the South by any means.... What the justices have done is simply to act as the conscience of the American nation.

The Pittsburgh Post-Gazette

Every fair-minded American will, we believe, applaud the Supreme Court's unanimous decision against racial segregation in the public schools....This ruling could hardly have come as a surprise to even the most determined advocate of segregation. The steadily changing social climate in this country since the ruling of 1896, and especially within the last few years, has made an end of segregation in the public schools inevitable.

The Chicago Tribune

The fact that the court was unanimous in the cases...should help a good deal to discourage resistance to the finding or attempts to evade its plain meaning for it is not likely that a unanimous court will change its mind....The principle established by this decision is not that anybody has to give up any of his prejudices...the principle is the much simpler one that the state governments, North and South, must regard all men as created equal so far as opportunities at the disposal of the state are concerned.

The San Francisco Chronicle

The majesty of the democratic idea that men are created equal and are entitled to the equal protection of the laws shines through yesterday's unanimous decision of the United States Supreme Court....This is the spirit, as well as the letter, of democracy speaking. Great as the impact of the anti-segregation ruling will be upon the states of the South in their struggle to make the physical and intellectual adjustment which it requires, still greater, we believe, will be its impact in South America, Africa and Asia, to this country's lasting honor and benefit.

Black Newspapers

The Atlanta Daily World

This case has attracted world attention; its import will be of great significance in these trying times when democracy itself is struggling to envision a free world. It will strengthen the position of our nation in carrying out the imposed duties of world leadership. Coming at this particular time, the decision serves as a boost to the spirit of democracy; it accelerates the faith of the intense devoutness in minorities who have long believed in and trusted the courts.

The Pittsburgh Courier

The conscience of America has spoken through its constitutional voice....This clarion announcement will also stun and silence America's Communist traducers behind the Iron Curtain. It will effectively impress upon millions of colored-people in Asia and Africa the fact that idealism and social morality can and do prevail in the United States, regardless of race, creed or color.

The Chicago Defender

Neither the atom bomb nor the hydrogen bomb will ever be as meaningful to our democracy as the unanimous declaration of the Supreme Court that racial segregation violates the spirit and the letter of our Constitution. This means the beginning of the end of the dual society in American life....

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College Newspapers

Cavalier Daily, University of Virginia

It is too early to tell what effect the Supreme Court decision to abolish segregated schools will have on the South....Although it is hard from a strict legal point of view to justify any action contrary to law, we feel that the people of the South are justified in their bitterness concerning this decision. To many people this decision is contrary to a way of life and violates the way in which they have thought since 1619.

Daily Tar Heel, University of North Carolina

The Supreme Court has declared, in powerful language, that it is time for the South and southern schools to face the truth—that separate but equal is a phrase without meaning, that segregated education is inherently unequal. If the university is true to its tradition, it will not now retreat before that declaration. This is the time for the yielding of personal prejudice and discrimination, for the changing of opinion and practice.... If we are wise, we will welcome Negro North Carolinians to our schools and to our university.

The Kernel, University of Kentucky

The ruling...is one of the hardest blows dealt against communist propaganda in many years. Unpleasant as it is to many southerners, we are on the road to making the democratic principles embodied in our Constitution a fact. Unfortunately the ruling will be opposed by many of the states involved....We hope with all our hearts that Kentucky and the University of Kentucky will be among the leaders to put the wheels of progress into motion.

The 1955 Decision: Desegregation "With All Deliberate Speed"

At the end of the court opinion in *Brown,* the justices asked the concerned parties to reappear before them later that term. The justices still needed to issue an order telling the nation how to implement its decision that segregated schools were unconstitutional. It wanted to allow the attorneys general of the segregated states an opportunity to explain the problems that would arise in implementing the *Brown* decision.

After hearing the arguments of the attorneys general, the Supreme Court realized that local conditions in the states differed widely. They decided therefore to leave to the federal district court judges the job of addressing the multitude of local problems. By way of direction, the Supreme Court said that the judges should "consider the adequacy of plans for the establishment of a racially nondiscriminatory school system." Desegregation, said the Court, should proceed "with all deliberate speed." The Court did not say, however, how fast "all deliberate speed" was, what the criteria for an "adequate plan" should be, or what a "racially nondiscriminatory school system" should look like. As a result, the high court left much to the interpretation of lower court judges, some of whom publicly opposed the desegregation order.

One of these was Judge John J. Parker of North Carolina's Fourth District Court. Shortly after the Supreme Court's 1955 ruling *(Brown II)*, Judge Parker ruled in a local school segregation case *(Briggs v. Elliott)*:

> (The Supreme Court) has not decided that the states must mix persons of different races in the schools...what it has decided...is that a state may not deny any person on account of race the right to attend any school that it maintains....The Constitution, in other words, does not require integration....It merely forbids the use of governmental power to enforce segregation.

Judge Parker's ruling, that a state need not take action to integrate its schools but need merely cease to enforce segregation, became the prevailing interpretation of *Brown.* The importance of the Parker decision was that it:

- put the burden of school desegregation on individual students and parents,
- overlooked the many nongovernmental means of enforcing continued segregation, and
- gave the narrowest possible interpretation of the *Brown* decision, aiding the obstructionist tactics of opponents of desegregation.

Lower court judges who were sympathetic to the cause of desegregation found that the Supreme Court had given them little ammunition with which to face a hostile community. Such judges were often told, "Judge Parker found a way to circumvent the *Brown* ruling. Why can't you?"

The Judiciary Versus the Other Branches of Government

The Supreme Court's historic decision in *Brown* found little support in the executive and legislative branches of government. Congress was largely controlled by a powerful leadership made up of senators and representatives from segregationist southern states. In an effort to nullify the Court's action, members of Congress introduced legislation to strip the federal courts of jurisdiction in desegregation cases. In addition, several members called for a change in the system of lifetime tenure for federal judges—a system that was designed to protect judges

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from the shifting winds of political change. One proposed plan called for the popular election of judges with the ability to remove them for unpopular opinions. None of these efforts succeeded, but they further "politicized" the desegregation controversy. The issue became a political pawn in elections. In the post-*Brown* era, southern politicians could count on political support simply by rallying their constituents against the despised Supreme Court decision. The few voices of moderation that existed, such as Congressman Brooks Hays of Arkansas, quickly found themselves out of office.

In the executive branch, President Eisenhower did not publicly oppose the *Brown* decision, but he did not support it either. In a message to the nation, he said: "The Supreme Court has spoken and I am sworn to uphold the constitutional processes in this country, and I am trying—I will obey."

Eisenhower later said that his appointment of Earl Warren to the Supreme Court was "the biggest damned-fool mistake I ever made."

The Brown Decision Enforced

In 1957, an incident in Little Rock, Arkansas, brought national attention and national troops to that town. When the dust settled, almost two years later, it was clear that the executive branch would enforce the *Brown* decision if school districts openly defied it.

The Story of Little Rock, Arkansas

Central High School in Little Rock, Arkansas, was scheduled to be desegregated in the fall of 1957. Nine black students were to enroll in the previously all-white high school. Although there had been no indication that the people of Little Rock intended to protest the enrollment of the nine students, on the first day of school Arkansas Governor Orval Faubus sent Georgia National Guard troops to prevent the students from entering Central High. The move was supposedly designed to prevent anticipated violence. Unfortunately, the assignment of National Guardsmen to the school and the accompanying media coverage provoked the very outcry it was allegedly meant to control.

Governor Faubus continued to prevent the black students from entering the school. Day after day, for three weeks, the nine students were barred from the entrance by National Guardsmen. Little Rock received daily coverage in the national news and Central High became the focus of anti-integration sentiment. A clear challenge had been made to the court system by Arkansas' governor.

On September 20, 1957, Federal Judge Ronald Davies ordered the governor to admit the students to Central High. By that point, however, an angry mob was gathering daily at the school to taunt and harass the black students. It was not at all certain that they would be able to enter the building even after the Georgia National Guard had been recalled.

On September 24th, as the nation watched, more than a thousand National Guardsmen and paratroopers entered Little Rock under the orders of President Eisenhower. The troops escorted the nine students into the school. The president had acted, as head of the executive branch, to enforce the law handed down by the Supreme Court.

Token Compliance

By the early 1960's, officials in segregated school districts knew that they had to at least appear to be in accordance with the law. Although the governors of North Carolina and Alabama had threatened to close the public school systems in their states, they had not done so. Instead, school districts created attendance zones and pupil placement plans designed to keep black and white students apart. One widely used practice was the adoption of "freedom-of-choice" plans. Such plans allowed students to choose which school they would attend. Under the plans, whites rarely chose to attend black schools and blacks frequently faced opposition to their "free choice" of a white school. Sometimes such opposition included threats to fire black parents from their jobs.

These types of tactics were very effective in keeping segregation in place. As late as 1962, not a single black attended white schools or colleges in Mississippi, Alabama or South Carolina. By 1964, only 2.3 percent of southern blacks were enrolled in desegregated schools.

New Direction from the Supreme Court

In 1963, the Supreme Court considered a "token compliance" plan in effect in Knoxville, Tennessee. Knoxville schools had been rezoned without regard to race. But a transfer plan allowed students who had been assigned to a school in which they would be a racial minority, to return to a school in which they would be in the majority. The NAACP, on behalf of Negro students in Knoxville, sued the board of education, saying that the plan resulted in a racial-

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ly segregated school system. The Supreme Court agreed. In its opinion, the Court warned the lower courts and the nation that its patience was beginning to be strained by the delaying tactics used to avoid integration:

> (We) are not unmindful of the deep-rooted problems involved. Indeed, it was consideration for the multifarious many local difficulties and "variety of obstacles" which might arise in this transition that led this Court eight years ago to frame its mandate in *Brown* in such language as "good faith compliance at the earliest practicable date" and "all deliberate speed."...Now, however, eight years after this decree was rendered and over nine years after the first *Brown* decision, the context in which we must interpret and apply this language to plans for desegregation has significantly altered.
>
> —*Goss v. Board of Education of Knoxville*

Changing Times

The Supreme Court was right in noting in *Goss* that the "context" of the times had changed. The new president, John F. Kennedy, had high hopes for the nation. Watching the racial violence in the South, as churches were bombed, school children threatened, civil rights activists killed, the president became committed to the passage of legislation that would strengthen efforts to desegregate not only the schools, but other public facilities as well.

Another sign of the changing times was the emergence of a black movement. Earlier, the burden of school desegregation had been on those few black students and parents who were willing to fight for admittance to white schools. By the early 1960's, however, groups of blacks and whites had begun to band together to fight as a group for "civil rights." Charismatic leaders such as Dr. Martin Luther King, Jr., emerged to rally support and give energy and impetus to the movement.

In 1964, in response to the nation's shock at the violence that killed President Kennedy and the violence of race relations in the South, Congress passed the 1964 Civil Rights Act. The Act allowed the Department of Health, Education and Welfare to deny federal funds to school districts that refused to integrate. It also permitted individuals to directly petition the U.S. attorney general if they felt they were victims of racial discrimination in education. This reduced the need for lengthy and expensive legal battles that states and localities had used as delaying tactics.

"All Deliberate Speed" Runs Out

Segregationists faced yet another defeat in 1964. The Supreme Court agreed to hear the case of *Griffin v. County School Board of Prince Edward County*. The case concerned a county in Virginia that had closed its public school system rather than desegregate. A system of private schools for white children was created instead. Both Prince Edward County and the state of Virginia had then passed laws permitting students to receive tuition grants to attend private schools. In its second year, Prince Edward's system of segregated private schools was funded primarily at public expense.

In declaring the county in violation of the *Brown* decision, the Supreme Court said:

> The record in (this) case could not be clearer that Prince Edward's public schools were closed and private schools operated in their place with state and county assistance, for one reason and one reason only: to ensure, through measures taken by the county and the state, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. Whatever nonracial grounds might support a state's allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional.

The Court then stated unequivocally:

> The time for mere "deliberate speed" has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in other parts of Virginia.

The Court Loses Patience with Plans that Don't Work

The passage of the Civil Rights Act in 1964 had forced many schools to make at least token efforts to desegregate in order to remain eligible for federal funds. Such was the case in New Kent County, Virginia. Prior to 1965, the county had had two high schools, one white and one black, both strictly segregated. In 1965, faced with a cut-off of federal funds, the county adopted a freedom-of-choice plan. The plan allowed those blacks and whites who wanted to transfer schools to do so.

By 1968, the plan was still not working. Not a single white child attended the black school; only 15 percent of the black students attended the white school.

The Supreme Court found New Kent's desegregation plan inadequate in meeting the requirements of the *Brown* decision. For the first time since 1954, the Court said clearly that the burden of school desegregation was not to be on individual students and parents, but on state authorities. It was not enough to simply stop segregating, the Court said. School authorities had to make active, *and effective,* efforts to promote integration of black and white school children within their jurisdictions.

It is of course true that for the time immediately

after *Brown II* the concern was with making an initial break in a long-established pattern of excluding Negro children from schools attended by white children. The principal focus was on obtaining for those Negro children courageous enough to break with tradition a place in the "white" schools....Under *Brown II* that immediate goal was only the first step, however. The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about.

In its decision, the Court pointed out that it had tolerated less affirmative action in the period immediately after *Brown* in order to allow the nation to get used to the idea of integrated schools. But by 1968, the Court reasoned, plenty of time had elapsed for such a transition to be made.

> In determining whether (the New Kent) School Board met (the command to integrate its schools) by adopting its "freedom-of-choice" plan, it is relevant that this first step did not come until some 11 years after *Brown I* was decided and 10 years after *Brown II* directed the making of a "prompt and reasonable start." This deliberate perpetuation of the unconstitutional dual system can only have compounded the harm of such a system. Such delays are no longer tolerable.... Moreover, a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is also intolerable....The burden on a school board today is to come forward with a plan that promises to work, and promises realistically to work *now*.

Desegregation Becomes a National Issue

Although much national attention had been focused on the desegregation issue since the 1954 *Brown* decision, it had been perceived not as a national problem, but as "the South's problem." The Supreme Court had in effect created that perception by focusing the attention of *Brown* on southern states (states that had "de jure" rather than "de facto" segregation).

By the late 1960's that perception had begun to change. The widespread riots in urban centers following the assassination of Dr. Martin Luther King, Jr., drew attention to the plight of blacks in northern cities. Southern politicians pointed to the urban ghettos and slums of the north and west and accused those areas of regional hypocrisy. And it was a fact that by 1970, the South as a region was more integrated than any other region in the country. Segregation in schools remained worst in large urban areas both north and south, because of residential segregation (the separation of races by neighborhood). In 1971, the Supreme Court had the opportunity to address that specific problem in the case of *Swann V. Charlotte-Mecklenburg Board of Education.*

The Great Conflict Over Busing

The Charlotte-Mecklenburg school district in North Carolina was one of the largest in the country. It encompassed a 550 square mile area and served over 84,000 students, approximately 29 percent of them black. Because more than 14,000 of the district's 24,000 black students still attended all-black or nearly all-black schools, very few of whom had white teachers, U.S. District Court Judge James B. McMillan felt that the district had not adequately complied with Supreme Court desegregation rulings. In the spring of 1970, Judge McMillan ordered the Charlotte-Mecklenburg school district to launch a massive desegregation effort. Since approximately 71 percent of the school population of the area was white and 29 percent black, the judge felt that a 71-29 white-black pupil ratio should be the goal for each school. To accomplish this, Judge McMillan ordered widespread changes in school attendance zones and ordered busing for 13,000 additional students. Busing was necessary, McMillan felt, to overcome the chief remaining obstacle to integration of the schools: residential segregation in urban areas.

The reaction of the country to Judge McMillan's decision was immediate and strong. Many people did not want their children bused away from their neighborhood schools for the purpose of achieving "racial balance."

On March 24, 1970, in response to public clamor over busing, President Nixon issued a policy statement about school desegregation in which he addressed the specific issue of busing.

> Several recent decisions by lower courts have raised widespread fears that the nation might face a massive disruption of public education: that wholesale compulsory busing may be ordered and the neighborhood school virtually doomed....
>
> Unless affirmed by the Supreme Court, I will not consider them as precedents to guide administration policy elsewhere.
>
> I have consistently expressed my opposition to any compulsory busing of pupils beyond normal geographic school zones for the purpose of achieving racial balance....
>
> One of the mistakes of past policy has been to demand too much of our schools. They have been expected not only to educate, but also to accomplish a social transformation. Children in many instances have not been served, but used—in what all too often has proved a tragically futile effort to achieve in the schools the kind of multiracial society which the adult community has failed to achieve for itself....
>
> I have instructed the attorney general, the secretary of health, education and welfare and other appropriate officals of the government to be guided by these basic principles and policies:
> —In devising local compliance plans, primary weight should be given to the considered judgment of local school boards—provided they act in good

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faith, and within constitutional limits.
—The neighborhood school will be deemed the most appropriate base for such a system.
—Transportation of pupils beyond normal geographic school zones for the purpose of achieving racial balance will not be required.

Thus, the president set himself and his administration apart from the position of the court.

The Supreme Court Considers Swann

By transferring the nation's attention to the Supreme Court as the final arbiter of busing, the Nixon Administration made the Court's consideration of the *Swann* case highly political.

It was clear that the issue would not easily be resolved. Several of the justices felt that the president was right; it was not their business to try to combat residential segregation. They also worried about the effects of busing, particularly on small children. Others felt that the state had been instrumental in creating residential segregation and therefore had a responsibility to address the problems caused by it. They felt that Judge McMillan had given the school board ample opportunity to submit a desegregation plan of its own (the school board had refused three times to do so). While concerned about the effects of busing on young children, they pointed to the fact that a third of Charlotte's students were already being bused and that under the proposed "McMillan plan" the average bus route would be shorter.

At play as well was the "politics of the Court." The Supreme Court under Chief Justice Earl Warren had been unanimous in each of its decisions in support of school desegregation. Now, however, there was a new chief justice, Warren Burger, who was more conservative in his views than Warren. The nation waited to see if the "Burger Court" would reaffirm or back away from the Warren Court's support of desegregation. Faced with opposition from the Nixon Administration, would the Supreme Court support the lower judge's somewhat radical approach?

The justices worried too about the tone of the times. The pro-integration rallies of the late 1960's were over. A backlash of anti-integration sentiment was developing, particularly among blue-collar workers in the North who were beginning to understand that desegregation was not limited to the southern states. Several of the justices feared that any slackening of support for the goals expressed in *Brown* would be used by opponents to turn the clock back to pre-1954 standards.

After much debate, the Supreme Court released its opinion in the spring of 1971. The decision was unanimous in support of McMillan. Although they stressed the need to consider factors such as the age of children in ordering busing, the justices supported the broad power of lower judges to order busing and other remedial measures in cases where school districts had refused to pursue voluntarily a "racially nondiscriminatory" school system.

> If school authorities fail in their affirmative obligations...judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.

Below are some of the decisions of the Supreme Court in *Swann*:

- *Judges may use racial quotas* as part of a flexible approach to establish an integrated school system. Such quotas, reflecting the racial balance of the community at large, may be useful starting points.
- *One-race schools are not, per se, unconstitutional.* However, judges and school authorities "should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools."
- *School districts may be rearranged at the discretion of judges* and school authorities to accomplish the task of desegregating a school system. While there is great latitude in arranging districts and zones, local conditions must be considered.
- *Transportation facilities (i.e. busing) may be used extensively* to effect desegregation in a school system. However, district courts should weigh factors concerning the health of school children or the impingement upon their education that may be posed by specific busing plans. The greatest consideration should be given to the age of the child.

Efforts to Desegregate the North: The Boston Case

That "de facto" segregation in the North and West was widespread is indicated by the fact that in 1972 over 70 percent of black students in those regions attended schools that were predominantly black. (By that time, only about 10 percent of blacks in the South were attending such schools.) One northern city in which the problem of segregated schooling was particularly bad was Boston, Massachusetts.

In 1976, the Civil Rights Commission described the situation in Boston as follows:

> The city of Boston has a population of approximately 641,000 people, many of whom live in neighborhoods with strong ethnic identities. Its black population is approximately 17 percent of the

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total and its student population is 34 percent blacks and 6 percent Hispanic. In 1973, 85 percent of black public school students attended schools that were more than 50 percent minority; 54 percent attended schools that were 90 to 100 percent minority.

The school system was controlled by a group called the Boston School Committee. Year after year, the committee had rejected proposals to redistrict the school system to create a greater racial balance. In considering the role of the committee in perpetuating a dual system, District Judge W. Arthur Garrity found that the committee had authorized the purchase and construction of school facilities in such a way as to increase racial segregation. Judge Garrity also found problems in the assignment of students to schools. He cited one case in which black students were bused involuntarily to a more distant school when there were available places at nearby white schools. He also took issue with the committee's "open enrollment" plan. Similar to the "freedom-of-choice" plans popular in the South in the mid-1960's, Boston's "open enrollment" allowed white students to transfer from a school that was starting to integrate to a school that remained segregated.

For years, the state of Massachusetts had brought pressure to bear on the Boston School Committee, including suing the committee in state court. But the committee refused to integrate the school system. In 1973, the Department of Health, Education and Welfare threatened to cut off federal funds to the city's schools, charging them with discrimination. In 1974, a case brought by the NAACP against the committee reached Judge Garrity's court.

The Boston School Committee asserted that segregated housing patterns were responsible for the separation of black and white school children and that their policy of maintaining neighborhood schools was constitutionally sound. The NAACP argued that "school district assignments themselves can affect housing patterns; that the school committee intentionally incorporated residential segregation into the school system; and that the committee policies were riddled with so many exceptions designed to increase segregation that its defenses need not be considered."

Judge Garrity agreed with the arguments made by the NAACP. He found that the school committee had "unconstitutionally fostered and maintained a segregated public school system through policies that had been 'knowingly' designed to that end." He also accused the committee of frustrating attempts by officials of the state of Massachusetts to desegregate the city. He suggested that the committee was guilty of "formalistic compliance followed by procrastination and evasion on technical grounds."

Having been given broad remedial authority by the Supreme Court in *Swann*, Judge Garrity designed and ordered a desegregation plan for Boston that was to begin in September of 1974. The plan involved two phases. By redistricting and busing students, the first phase was to desegregate 80 of the city's approximately 200 schools. Most of the rest of the schools were scheduled for desegregation in the second phase, which began in the 1975 school year.

In his opinion, Judge Garrity maintained that he had no choice but to order widespread busing in order to correct the situation.

> The Court does not favor forced busing, (but given) the racial concentrations of its population, Boston is simply not a city that can provide its black school children with a desegregated education absent considerable mandatory transportation.

The mob violence that accompanied the start of Phase I was well-publicized. The nation watched as angry parents threw rocks at buses, harassed incoming black students, and vandalized school grounds. The city's mayor, Kevin White, issued a statement saying that he could not guarantee the safety of the public during the riots.

However, although well-publicized, the violence was principally limited to only four of the 80 schools that participated in Phase I. At the majority of the other schools, the desegregation process proceeded smoothly.

Throughout both phases, the court remained an active overseer, directing details of the process that would have been left to the school committee, had the committee not continued to fight the court's order to integrate. According to the Civil Rights Commission:

> The principal leadership for desegregation in Boston came from the U.S. district court. The court did not seek or arbitrarily seize that role. It was forced upon the court because, as Thomas Atkins, local NAACP leader, observed: "The mayor...has refused to lead and has tried to hide. The (present) governor...and the last one...have tried to say that it's the mayor's problem, it's the judge's problem, it's anybody's problem; it's not my problem."
>
> By implementing his decision through a series of detailed orders formulating educational policy and directing the administrative process, Judge Garrity succeeded in desegregating the Boston school system.

Congressional Challenge to Court Jurisdiction

From the time the Supreme Court delivered its 1954 decision in *Brown*, there were members of Congress who felt the Court had overstepped its legal

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authority and ventured too far into the field of public policymaking, a field the Congress preferred to dominate. Throughout the 1960's there were attempts to limit the Court's authority in school desegregation cases. However, when Court-ordered busing created a furor in the 70's, (along with the Court's abortion decision), Congress stepped up its efforts to limit the Court's ability to effect certain areas of public policy.

In the 97th Congress (1981-82), more than 30 bills were introduced to restrict the jurisdiction of the court system in some way. Examples of such legislation include the following:

H.R. 340 provides that no federal court shall have jurisdiction to render a decision "the effect of which would be to require that pupils be assigned to a particular school on the basis of their race, color, religion, or national origin."

H.R. 761 provides that no federal court shall have jurisdiction to render a decision "which would have the effect of requiring any individual to attend any particular school."

H.R. 1079 and H.R. 1180 provide that "no court of the United States shall have jurisdiction to require the attendance at a particular school of any student because of race, color, creed or sex."

In May and June of 1981, the Senate Judiciary Committee held hearings to consider legislative proposals to limit the jurisdiction of the federal courts. Proponents of the proposals argued that the Supreme Court (and the lower federal courts to some extent) has used its power to pursue social goals that the justices favor. Since Supreme Court justices are not accountable to the people, this side argued, they should not be allowed to create public policy in the name of the Constitution. Opponents of the legislation, however, maintained that the Court's critics are doing just that of which they accused the Court: using their (legislative) power to overturn public policy with which they disagree. Legislative proposals to limit the Court's authority, this group said, are merely attempts to short cut the legitimate means of restraining the Court: a constitutional amendment. To date, no legislation has been passed, but the debate in Congress remains lively.

The Supreme Court as Public Policymaker

Many of the decisions made by the Supreme Court and the federal courts affect the public policies of this nation. The job of the Supreme Court, that of interpreting the Constitution, is a dynamic one. As the values of society change, the context within which the justices read the words of the Constitution also changes.

Should the Supreme Court and the federal courts be limited in interpreting the Constitution when their decisions have profound impact on public policy? Does the Court have a responsibility to lead the nation in a new direction if government policies are shown to conflict with the principles of the Constitution? These are not easy questions, but they are ones that will continue to exist as the Court enters its third century as the final arbiter of American justice.

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5. Interest Groups

"In every country where man is free to think and to speak, differences of opinion will arise from differences of perception and the imperfection of reason."

—Thomas Jefferson

The role played by interest groups is often overlooked in the study of government, but it is an integral part of our political process. Corporations, labor unions, trade associations, environmental groups, and many other organizations employ lobbyists to ensure that their views are made known to legislators. In so doing, interest groups play a positive role in the political process. They provide legislators with valuable information and ensure that the interests of their members are represented in the policymaking process.

Since representatives and senators depend on their staffs for information, lobbyists often work directly with legislative staff members. In addition, interest groups have begun to employ new methods to persuade legislators. One of the most effective of these has been mass mailing. Organizations with computerized mailing lists can elicit floods of mail from their supporters. When legislators receive thousands of letters on one side of an issue they are often persuaded to support that position.

There are thousands of lobbyists in Washington and around the country, representing many different interests. Some represent narrow special interest groups, such as tobacco farmers or chemical maunfacturers, others represent more broad-based groups, such as labor unions or the chamber of commerce. All tend to see issues from the point of view of the group they represent.

As you read the articles in this chapter, think about the role interest groups play in expressing the often competing views of millions of Americans. How would you try to convince a member of Congress or the executive branch to support your position on an issue?

In This Chapter

Michael Ware
What Is a Lobbyist?
The assistant director for legislative affairs for Conoco Inc. explains the lobbying process and discusses the importance of lobbyists to our political system.

Some Lobbyists and Their Issues
Representatives of five of Washington's most influential interest groups explain what they are fighting for and how they win their battles.

Claudine Schneider
What Makes Effective Lobbying?
A Republican representative from Rhode Island explains how effective lobbyists can influence her vote.

Case Study: Interest Groups
Restrictions on Japanese Auto Imports: Lobbying in the American Political System
While Japanese auto manufacturers were winning battles in American auto showrooms, American trade and union lobbyists were fighting back in Congress.

Words to Know

grass-roots lobbying
inside lobbying
interest group
lobbyist
petition
political action committee
pressure group
public interest
special interest

What Is a Lobbyist?

Michael Ware

Michael Ware is assistant director for legislative affairs for Conoco Inc. He draws on his personal experience as a lobbyist to provide insight into the nature of lobbying. Mr. Ware asserts that the main function of a lobbyist is to educate members of Congress and that lobbyists are indispensable to the political process.

"A lobbyist," Senator James Reed of Missouri once said, "is anyone who opposes legislation I want." Probably most people feel that way. Lobbyists are envisioned as unshaven, cigar-smoking political "fixers" carrying money-filled bags so they can bribe legislators.

Actually, although the term lobbyist is held in low esteem, everyone to some degree is a lobbyist. Any person who attempts to persuade someone else, whether it is in regard to community activities, the PTA or social welfare programs, is actually lobbying.

Who is a Lobbyist?

Legally, a lobbyist is a petitioner of the government exercising a right granted in the First Amendment of the Constitution:

> Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The assumption that all individuals and groups are entitled to representation in the making of public decisions forms the basis for all lobbying activities. It is the true essence of participatory government.

The Washington Lobbyist, by Lester W. Milbrath (Rand McNally and Co., 1963, pp. 7-8), describes the lobbying functions in a more scholarly manner:

> Despite the imprecision of the word "lobbying," some boundaries can be defined. First, lobbying relates only to governmental decision-making. Decisions made by private organizations or by corporations may be influenced by special interests within those organizations or from without, but they do not affect the entire body politic.
>
> Second, all lobbying is motivated by a desire to influence governmental decisions (many actions and events affect the outcome of governmental decisions), but if they are not accompanied by an intent to influence, there is no lobbying.
>
> Third, lobbying implies the presence of an intermediary or representative as a communication link between citizens and governmental decision-makers. A citizen who, of his own volition and by his own means, sends a message to a governmental decision-maker is not considered a lobbyist—though he is attempting to influence governmental decisions. Some may not agree with this stipulation. However, if all citizens are potential lobbyists and if all voters are lobbyists (since voting is, in a sense, a message sent with intent to influence), the word lobbying would lose its usefulness.
>
> Fourth, all lobbying involves communication. Without communication, it is impossible to influence a decision. On the other hand, not all communication—only that which attempts to influence governmental decisions—is lobbying.
>
> Broadly defined, then, lobbying is the stimulation and transmission of communication by someone other than a citizen acting on his own behalf directed to a governmental decision-maker with the hope of influencing his decision.

"If It Walks Like a Duck..."

The concept that any lobbying is corrupt is fairly commonplace. The reasons why are simple. A general assumption is that the "public interest" is somehow subverted by the lobbying process. The defeated party in a policy battle often charges that the opponents won because of the evil activities of lobbyists. Citizens readily accept these charges because they confirm their preconceptions. As Milbrath found in his study, "The public generally receives only negative information about lobbyists."

With this kind of public image, it's no wonder lobbyists call themselves by different titles. They are a "Washington Representative," or "Legislative Liasion" or (worst in light of current revelations) "Coordinator of Government Affairs."

Borrowing an analogy from former senator Sam Ervin (D-N.C.), however, "If it walks like a duck, sounds like a duck, and when I see it, it is always in the company of other ducks, I just naturally assume it is a duck."

For the same reason, some groups attempt to disassociate themselves from the negative image of lobbying by proclaiming that they are "public interest" lobbyists in contrast to "special interest" lobbyists. They refer to their own activities as educational and those of their opponents as lobbying. Sometimes a duck prefers to be seen as a peacock.

Lobbyists: Sources of Information

Whatever titles are used, the principal function of a lobbyist is *education* and his principal commodity is *information*.

In every session of Congress, more than 20,000 pieces of legislation are introduced. The subjects of these bills cover every aspect of American society: energy, en-

vironment, health, welfare, job safety, economics and many other complex issues. No representative or senator can be an expert in all of these fields, yet expertise is required in making decisions on these issues.

This expertise is provided by the lobbyist.

On many occasions the lobbyist is the only individual to whom legislators can look for specialized information that they need. Without the information provided by the lobbyists, the legislative process would be severely hampered. The lobbyist is frequently an informal consultant to legislators and their staffs. This is not a self-serving statement. Without the information that the lobbyist possesses, the Congress would be much more dependent upon the executive branch, thus further eroding the balance of power between the two.

Lobbyist: Spokesman for Organized Interests

Members of Congress need to know the "cross-section" of views that exists in the areas they represent. In a complex society, everyone cannot come to a town meeting or to Washington to present his or her views. People need to organize. They need representation groups or special interests, which means they need a person to act for them when they cannot. Members of Congress thus "hear" from their constituents as their special or unique interests are represented by the business lobbyist, the labor lobbyist or the consumer lobbyist. Combined with the letters received from "the people back home," this helps the legislators to represent the people who elected them.

That is a service for which there is no substitute—the presentation of the people's views. The creative function this serves in alerting decision-makers to all possible alternatives outweighs all the frustrations involved in lobbying. This one function is also most clearly protected by the constitutional right to petition.

Officials might find other sources for additional services lobbyists provide, but they could never find a substitute for the essential representational function that spokesmen for organized interests provide.

Former congressman Emanuel Celler (D-N.Y.) sums up this point rather well:

> "It is true that the pressures generated by a well-organized group can become irritating. But despite this I believe that too much lobbying is not as dangerous as too little. The congressman may know or suspect that there are serious opposing considerations (to legislation), but they are simply not presented. He is faced with a dilemma as to how far he should go to supply the omission."

In addition, the lobbyist has a responsibility to protect the legitimate interests of his employer and to keep the employer informed on specific and general trends which affect a particular business or a particular special interest.

To those not familiar with Washington, this may seem to be a rather insignificant assignment. It must be realized, however, that the lobbyist is usually working for someone who is located far away from Washington and who, in many instances, lacks a political orientation. The employer who is made knowledgeable of the present political situation and of possible future governmental actions is a much more capable individual than the one who operates in a political vacuum.

Indispensable Parts of Our Political System

The fundamental questions remain: What contributions do lobbyists make to the political system as a whole? Do these contributions tend to make the political system more or less workable?

Many congressional officials claim they could function quite adequately without lobbyists. They are, however, quite indispensable. If information from lobbying and lobby groups was, for some reason, unavailable to government officials, those officials

TYPES OF LOBBYISTS (1): Political Interest Groups

One category of lobbyists includes those organizations whose membership is made up of citizens of similar political viewpoints and/or with common issues. Political interest groups may lobby on a single issue or on a broad range of issues. Here are a few examples:

1. American Conservative Union—lobbies on all issues in which conservatives are interested.

2. Americans for Democratic Action—lobbies on all issues in which liberals are interested.

3. American Security Council—represents the views of the defense industry and national security interests.

4. Common Cause—identifies with the public interest rather than exclusively with liberals or conservatives. Lobbies on such issues as open government, public financing of congressional campaigns, defense spending, ethics, energy.

5. Council for a Livable World—represents individuals who support arms control and reduced military spending.

6. Sierra Club—lobbies on environmental issues including energy, water resources and land use.

7. Young Americans for Freedom—lobbies on all issues in which conservatives are interested.

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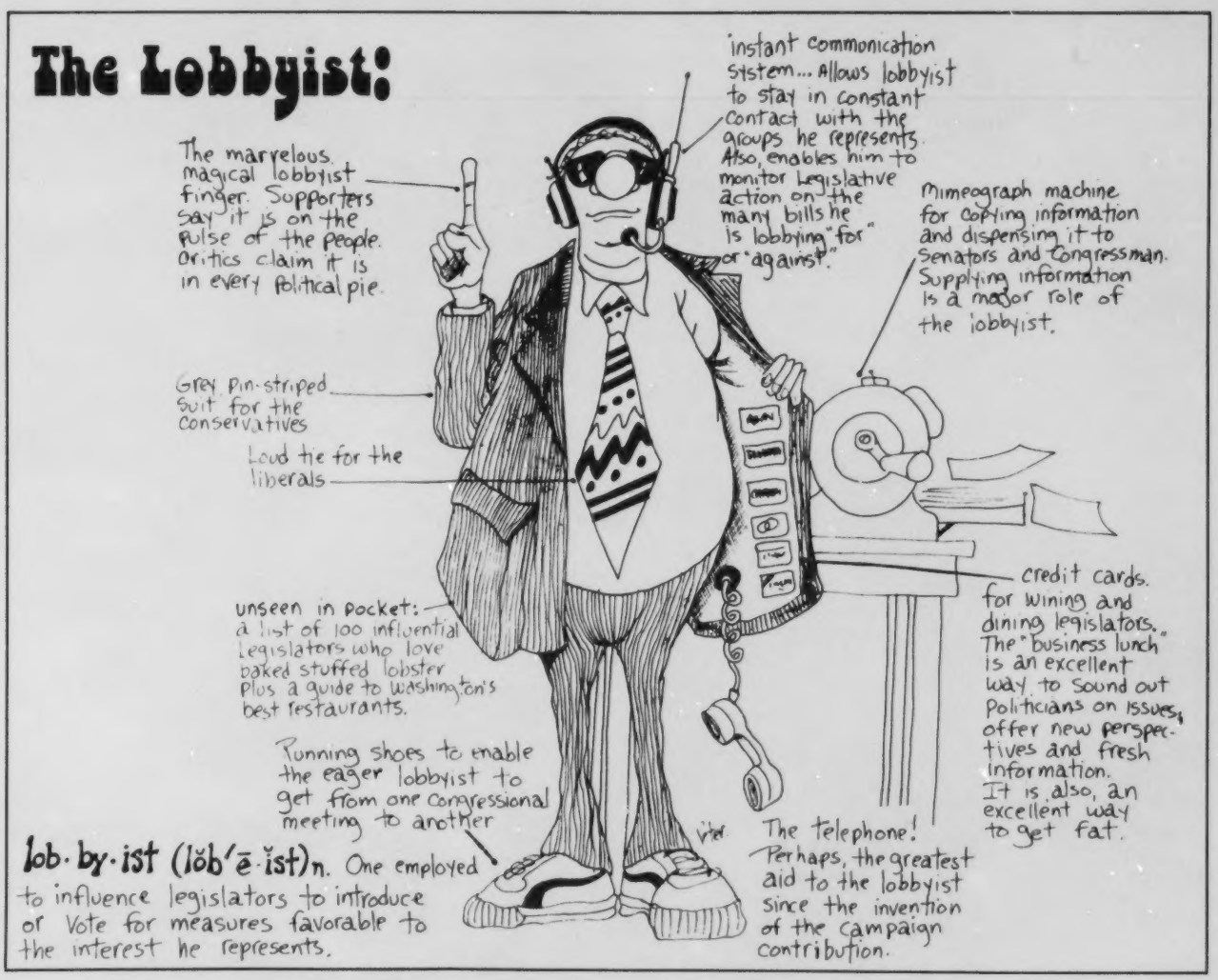
would be largely dependent on their own staff for all information and all ideas. More important, cutting off lobbying communications would eliminate a most valuable source of creativity. There is no assurance that government institutions can turn up all possible alternative solutions to policy problems. As a matter of fact there is a great deal of evidence that points to the opposite.

A decision-maker who has his mind made up may well have to have new points of view forcefully presented to him before he can perceive and accept them. The clash of viewpoints between contesting groups is not only informative, it is also creative. The best way to teach the realities of life, according to John Stuart Mill, is by hearing the opposition. Let the position be challenged, and let the challenge fail. This method was considered by Mill to be so important that he recommended inventing a challenging position if a real one was not forthcoming. Formerly unperceived alternatives may arise from the challenge to previously accepted possibilities.

Through lobbyists and lobby groups, officials know what the effects of a given policy will be and how citizens will react to that policy. The lobbyist defines opinions regarding government issues in real and specific terms to a degree that cannot be achieved through political parties, the mass media, opinion polls and staff assistants.

There is good reason to conclude then that the "political system" without lobbyists would not produce wiser or more intelligent decisions. Instead, the assumption could be made that if we had no lobbyists, they would probably have to be invented to improve the functioning of our political system.


The Lobbyist:
instant communication system... Allows lobbyist to stay in constant contact with the groups he represents. Also, enables him to monitor Legislative action on the many bills he is lobbying "for" or "against."
The marvelous magical lobbyist finger. Supporters say it is on the pulse of the people. Critics claim it is in every political pie.
Mimeograph machine for copying information and dispensing it to Senators and Congressman. Supplying information is a major role of the lobbyist.
Grey pin-striped suit for the conservatives
Loud tie for the liberals
credit cards for wining and dining legislators. The "business lunch" is an excellent way to sound out politicians on issues, offer new perspectives and fresh information. It is also, an excellent way to get fat.
unseen in pocket: a list of 100 influential Legislators who love baked stuffed lobster plus a guide to Washington's best restaurants.
Running shoes to enable the eager lobbyist to get from one congressional meeting to another
The telephone! Perhaps, the greatest aid to the lobbyist since the invention of the campaign contribution.
lob·by·ist (lŏb'ē·ĭst) n. One employed to influence legislators to introduce or vote for measures favorable to the interest he represents.

Know the Lobbyists

In 1980, about 4,800 organizations and individuals registered as lobbyists in Washington, D.C. Some are concerned with only one issue, others with a variety of issues. There are always many groups lobbying on any given issue, some in favor and some against. To help you become more familiar with lobbying and lobbyists, **Perspectives** presents a list of 18 organizations and descriptions of their membership. Next, nine major issues of domestic and foreign policy are listed. Match each issue with the two organizations likely to be concerned, and decide whether each would favor or oppose the issue.

Here are some suggestions to complete this exercise. First, consider that all lobbyists represent the interests of their membership. Second, read your local newspaper and the national newsmagazines. Third, use reference books on lobbying organizations in your library. For example, the information on memberships was drawn from *The Washington Information Directory 1977-78* (Congressional Quarterly, Inc., Washington, D.C.). Fourth, you can write to the House or Senate committees that deal with that particular policy area.

a. AFL-CIO: largest labor union in the nation.
b. American Israel Public Affairs Committee: individuals and organizations supportive of Israel.
c. American Medical Association: physicians and other health staff.
d. American Petroleum Institute: producers, refiners, marketers and transporters of oil.
e. Atomic Industrial Forum: industrial firms, utilities, labor unions and other organizations interested in the peaceful uses of nuclear energy.
f. Chamber of Commerce of the United States: businesses, trade associations and local chambers of commerce.
g. Committee for National Health Insurance: individual citizens, labor unions and other groups.
h. Consumer Federation of America: national, regional, state and local consumer groups.
i. National Wildlife Federation: citizens' group concerned with safeguarding the environment.
j. Committee on the Present Danger: group concerned with threat of Soviet expansionism.
k. National Association of Arab-Americans: Americans of Arab descent.
l. National Council to Control Handguns: citizens' group.
m. Americans for SALT: support for new Strategic Arms Limitation Treaty.
n. National Organization for Women: Women and men interested in civil rights for women.
o. National Rifle Association: hunters, gunsmiths, collectors and others interested in firearms.
p. National Right-to-Life Committee: lobbies for pro-life legislation.
q. National Right-to-Work Committee: employees and employers supporting voluntary unionism.
r. Public Interest Research Group: citizens' group led by Ralph Nader, interested in nuclear energy.

Favor	Oppose		Favor	Oppose	
___	___	___	___	___	___
___	___	___	___	___	___
___	___	___	___	___	___
___	___	___	___	___	___
___	___	___	___	___	___
___	___	___	___	___	___
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___	___	___	___	___	___

The Nine Issues Are:

1. Gun Control
2. National Health Insurance
3. Government Regulation of Consumer Products
4. Nuclear Energy
5. Abortion
6. Labor Law Reform
7. Offshore Oil Exploration
8. Nuclear Arms Limitation
9. Arms Sales to Egypt and Saudi Arabia

Some Lobbyists and Their Issues

The role of lobbyists in our democracy is to influence legislation to benefit a special interest, which may or may not be good for the country as a whole. Many people have argued that lobbyists have too much influence, sometimes gained by contributing large amounts of money to congressional campaigns. William Lambdin's book the Double-speak Dictionary *defines lobbyists as "the stockbrokers of government, who buy and sell freedom."*

But although some lobbyists may have abused their position, distinguished scholars of government have defended their role in government. The late Supreme Court Justice William O. Douglas wrote that alone, the average American can say little to government. "The Bill of Rights—with the judicial gloss it has acquired—plainly is not adequate to protect the individual against the growing bureaucracy," he wrote. "He faces a formidable opponent in government, even when he is endowed with funds and with courage. The individual is almost certain to be plowed under unless he has a well-organized, active political group to speak for him."

Below are essays from representatives of five lobbying and advocacy organizations describing their organizations, their issues and the way in which they try to influence federal policy.

The National Rifle Association

John D. Aquilino, Jr., director of public education

Concern over crime has resulted in numerous proposed solutions. One approach common during the past few decades has been a call for legislation regarding the private ownership of firearms. Since 1968 federal statutes have prohibited firearms use, purchase or possession by criminals, drug abusers and mental defectives. Because criminals are forbidden to own firearms, those advocating "gun control" turn their attention toward the honest firearms owner. As might be imagined, those who own firearms for legitimate purposes resent the implication that they should be punished for the actions of the criminal minority.

In 1975 the National Rifle Association of America responded to the assault on honest firearms owners by creating its Institute for Legislative Action, its lobbying arm.

Since its inception the NRA Institute has virtually created the concept of "grassroots lobbying." The NRA Institute employs the traditional lobbying techniques of analyzing proposed legislation, presenting the NRA's position to legislators and their staffs and urging support for this position in congressional voting before committees or on the floor of the House or Senate. In addition, the NRA membership and concerned firearms owners, hunters and those who simply wish to preserve their choice of whether or not to own a firearm play a key role in "grassroots lobbying." This constituency writes letters and places telephone calls to legislative offices to ensure that their elected officials know of their concern. And, most importantly, on election day they vote.

The strength of the NRA's lobby effort rests in the support of the American people. A powerful sponsor of the rights of the honest citizen, the NRA Institute believes the infringement of one constitutionally guaranteed right erodes all the basic rights upon which the nation was founded. The Institute believes those who commit crimes should be punished for their acts, and that the principles of education, safety and marksmanship excellence taught by the NRA since 1871 are of benefit to the community and the nation.

TYPES OF LOBBYISTS (2): Foreign Governments

Laws made in Congress affect foreign nations as well. Foreign governments are permitted to hire lobbyists to represent their views. Here are some examples of governments which hired lobbyists in 1978:

Algeria	Indonesia
Argentina	Israel
Australia	Italy
Belgium	Japan
Brazil	Mexico
Chile	Netherlands
Egypt	New Zealand
Finland	Saudi Arabia
France	South Korea
Great Britain	Spain
Greece	Swaziland
India	Yugoslavia

Congress Watch

Nancy Drabble, director

Congress Watch is a legislative advocacy arm of Public Citizen, the consumer organization founded by Ralph Nader in 1971. Congress Watch represents Pub-

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lic Citizen's Health Research Group, Critical Mass Energy Project, Tax Reform Research Group and Litigation Group before the U.S. Congress.

Congress Watch is concerned with a wide variety of issues that do not fit into one tight ideological mold. In general, current legislative involvement addresses the issues for which Ralph Nader and Congress Watch have gained recognition in the past. For example, Congress Watch supports deregulatory efforts where free enterprise is successful—as is the case in the trucking industry—and strongly advocates effective governmental regulation where markets fail—as is the case in environmental, health and safety matters. Congress Watch opposes corporate welfare programs—including business subsidies and tax loopholes—that drain money from deserving social programs. Finally, Congress Watch supports all efforts to make the democratic process work, including citizen access to, and participation in, public and corporate decision-making.

The purpose of lobbying is to persuade members of Congress to support the position the organization advocates. Congress Watch lobbyists distinguish themselves from business lobbyists through the methods they employ on the Hill. Rather than try to win the respect of representatives and senators with expense accounts, business lunches and campaign contributions, Congress Watch lobbyists use a combination of reliable information and support from local constituents to establish their credibility. Information dissemination on a national level in concert with citizen activism on a local level has enabled Congress Watch to become a uniquely influential organization.

American Israel Public Affairs Committee

Thomas Dine, executive director

The American Israel Public Affairs Committee (AIPAC) is the only American Jewish organization registered to lobby Congress on legislation affecting Israel. Headquartered in Washington, AIPAC is the nationwide American organization that has worked to strengthen U.S.-Israeli relations for more than 25 years. AIPAC has spearheaded efforts to defeat the sale of sophisticated American weaponry to hostile Arab regimes, and has helped to protect and defend foreign aid requests to Israel of more than $2.2 billion annually.

On a daily basis, AIPAC lobbyists meet with representatives, senators and their staffs to provide useful material, monitor all relevant legislation and anticipate legislative issues affecting Israel. In this way AIAPC lobbyists serve an invaluable function in the American political process. They are a vital informational and creative resource for members of Congress, helping them to deal with the multitude of issues that confront them every day.

In addition, AIPAC is active on university campuses, educating and involving pro-Israel students in the American political process and sensitizing America's future policymakers to Israel's strengths and needs.

Once a year all 34,000 members of AIPAC, including students, are invited to Washington to meet with their U.S. representatives and to formally approve AIPAC's policy statement, which serves as the organization's guide throughout the year.

TYPES OF LOBBYISTS (3): Professional Lobbyists

Not every business or organization or private citizen can afford to have its own lobbyist. Many Washington lawyers offer their services as lobbyists. One advantage of hiring a Washington lawyer is that these people have extensive connections and knowledge of how things get done. Here are a few examples of professional lobbyists and their clients:

1. Arnold and Porter—Bic Pen Corp., Braniff International, American Telephone and Telegraph Co., National Association of Broadcasters, Government of Switzerland.

2. Covington and Burling—Campbell Soup Co., American Watch Association, National Football League, Outdoor Advertising Association, C&P Telephone Co.

3. Walker Associates—ITT, Pan Am World Airways, United Airlines, Getty Oil Co., Encyclopedia Brittanica, Goodyear Tire Co.

4. Jerome Waldie (lawyer, former congressman)—Friends of the Earth, National Association of Letter Carriers, National Franchise Association Coalition.

The National Taxpayers Union

Len Rippa, director of congressional affairs

The National Taxpayers Union was founded in 1969 by a handful of concerned taxpayers. Since that time NTU has helped to organize the most extensive, broad-based grassroots network of taxpayers in the country. NTU is a nonpartisan, nonprofit public interest organization representing almost a half a million members. It provides an opportunity for taxpayers to participate in the political process. Concerned American taxpayers acting through NTU work to achieve an honest ac-

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counting of government financing through a reduction of government waste, spending, bureaucracy and regulation; lower taxes for everyone; and a constitutional amendment that would outlaw inflationary deficit spending and reduce the tax burden.

To achieve these goals NTU publishes an informative and educational monthly newsletter that keeps its members and others informed about what's happening in Washington. NTU has an extensive grassroots network of more than 10,000 key contacts in all 50 states. Personal visits to members of Congress and their staffs complement this educational effort.

Practically every conceivable interest group—every business, every trade association and every government agency—has lobbyists who work hard seeking higher taxes and greater spending to fund programs that benefit their particular interest. The National Taxpayers Union works just as hard to provide a balanced account of wasteful and unnecessary spending. The National Taxpayers Union's lobbyists represent the public's interest without regard to politics or geographic considerations, as opposed to special interest lobbyists, who represent businesses or organizations seeking to enhance their own well-being through favorable legislation.

The Wilderness Society

Rebecca K. Leet, director of education

The Wilderness Society is a 65,000-member conservation organization founded in 1935 to ensure the preservation of wilderness and the proper management of all federally-owned lands. It is the only national conservation organization whose sole focus is the protection of all federal lands—national forests, national parks, wildlife refuges, wilderness areas and the lands administered by the Bureau of Land Management.

Although the Wilderness Society is a non-profit organization and not a lobby in the traditional sense, it is active in the arenas where public debate shapes federal policy. Primarily the Wilderness Society seeks to educate and influence decision-makers in a variety of ways. Sometimes it lobbies directly on specific legislation, talking with members of Congress or their staffs to persuade them to support a particular bill. The Society also seeks to educate the public about important public land issues by maintaining close contact with the news media. The Society recognizes that reporters and editorial writers who are well-educated about important issues are very likely to turn around and inform their readers about these same issues.

In addition, the Society's staff discusses proper regulation and management of public lands with key government officials; sponsors workshops to teach citizens how to become involved in the policymaking process; analyzes and comments on new preservation and management proposals; testifies at congressional hearings in support of or in opposition to public land measures; and establishes cooperative programs with other conservation organizations. Occasionally the Society's staff has conducted original research. When the administration wanted to search for oil and gas deposits in wilderness areas, the Society, using federal data, found that despite claims by the administration, only a negligible amount of oil and gas exists in wilderness areas.

The fairest public policy is developed when a variety of viewpoints are considered. The Wilderness Society considers that its role is to bring to the process of public policy formation a well researched and clearly articulated point of view that reflects the interests of the public—those concerned and those unaware—who depend on the federally-owned lands to provide recreation, to protect the air and water supplies, to protect wildlife and fragile ecological areas and to ensure a sustained yield of renewable resources like trees and grasslands.

DOONESBURY by Garry Trudeau

..AND HAVE THOSE OTHER TWO CARTONS OF BOOKS SENT BACK TO THE HOUSE! THEY'RE DICK'S BIRD BOOKS!
RIGHT AWAY! OH, BY THE WAY, MRS. DAVENPORT, THERE ARE A COUPLE OF LOBBYISTS HERE TO SEE YOU..
YOU CAN'T BE SERIOUS! MY FIRST LOBBYISTS? ALREADY?
YES, MA'AM.
GRACIOUS! WHICH SPECIAL INTERESTS?
HANDGUNS AND OIL..
HOW EXCITING! HAVE THEM WAIT FOR A WHILE!

TYPES OF LOBBYISTS (4): Businesses, Unions and Trade Associations

Some corporations and labor unions have their own lobbyists. Frequently these people are part of the "government relations" division. Businesses or unions which cannot afford to have permanent lobbyists will hire professional lobbyists (who frequently are lawyers) based in Washington. Trade associations are organizations which represent an entire industry or other large group with common interests. Here are some examples of lobbyists who registered during 1978, and the issues on which they lobbied:

1. **BUSINESSES AND CORPORATIONS**

   Dr. Pepper Company—a variety of issues including nutrition, health, food safety, franchise matters and bottle laws.

   Gulf Oil Company—all legislation affecting the oil and gas industry.

   McDonald's—has its own lobbyist who lobbies on any and all laws affecting the corporation.

   Major League Baseball—hired a law firm to lobby on all legislation affecting professional sports with special attention to bills dealing with tax deductions for entertainment activities and facilities.

   Zenith Radio Corporation—all legislation affecting the television and radio industry, especially bills concerning imports, customs laws and tariffs.

2. **LABOR UNIONS**

   AFL-CIO—has its own lobbying division which works on all bills affecting workers.

   American Federation of Teachers—all bills affecting teachers.

   International Union of Electrical, Radio and Machine Workers—its lobbyists are concerned with issues affecting workers in the electrical, electronics, machine and optical products' industries.

   United Mine Workers of America—its lobbyists work on bills affecting the coal industry and such issues as black lung disease benefits.

3. **TRADE ASSOCIATIONS**

   American Gas Association—represents the natural gas industry on all energy bills.

   American Hospital Association—its lobbyists work on health care bills, especially hospital cost containment.

   Cosmetic, Toiletry and Fragrance Association—all bills affecting their industry.

4. **POLITICAL ACTION COMMITTEES**

   The lobbyists listed above are the permanent Washington representatives of their companies, unions and associations. They lobby in Congress on bills affecting their interests. In addition, these same organizations set up "political action committees" (PACs) during campaigns. These PACs contribute money and work on behalf of candidates of their choice.

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What Makes Effective Lobbying?

An Interview with Representative Claudine Schneider

Lobbyists spend hours on the phone and walking the halls of congressional office buildings to convert members of Congress to their side on particular issues and to thank those members who have been supportive, often with generous campaign contributions. Below U.S. Representative Claudine Schneider (R-R.I.) talks to CLOSE UP about the role of lobbyists in the congressional decision-making process.

CLOSE UP: What role do you feel lobbying plays in the congressional process?

Representative Schneider: It provides the elected official with information. More often than not you're lobbied from both sides; it's like observing a point-counterpoint discussion in a debate. What I do is to take each point that the lobbyist makes and have my staff verify how accurate that information is. Then I make my decision.

CLOSE UP: Interest groups generally reflect a bias in support of certain groups in society? How important is it for you to know what a group's bias is when evaluating the information they provide?

Representative Schneider: The way I like to go about doing business is to not make decisions through association, but rather on the facts. When I look at the facts on a variety of different issues, I try to use what I consider to be my best judgment. Only secondarily I may look at the groups that support one side or another. For example, if there is an environmental bill, before I even know who is coming down on what side of an issue I like to study the bill or the proposal first and then make a decision. Some members of Congress will read the lineup and say, "Oh boy, I want to be associated with the elderly organizations or with the unions or with the doctors" or whatever it might be. I use that method of association much less frequently, and I think that's reflected in my voting record. I don't have a 100 percent voting record with anybody except maybe the Consumer Federation of America, and that's not quite 100 but its the highest voting rating that I have anywhere, I believe. The reason for that is that I don't think business is always right, and I don't think labor is always right. I like to have a high rating with consumers because consumers are also businessmen and labor and elderly and young and members of all groups in society. That's essentially how I make my decisions.

CLOSE UP: What are the different approaches to lobbying that various groups take with you, and which ones seem to be the most effective?

Representative Schneider: I think that everyone who makes a contribution to my campaign knows that that contribution will not buy my vote on their proposals. Sometimes lobbying is done by inviting members to a special event, such as a ball game or a tennis match. If and when I accept, I accept because I enjoy those people, and I would like to spend an evening with them and because I'm interested in the entertainment that they are providing. But I think that without question, any lobbyist that may have invited me out knows that he won't have me in the palm of his hand. The other form of lobbying, which is much more straightforward, is when a professional lobbyist comes into your office and says, "These are our concerns: one, two, three, four, and this is what the impact of it will be, boom, boom, boom, boom." Often, national associations will send in their Rhode Island or local representatives, which I think is most effective because I am more inclined to receive a Rhode Islander than I am someone else. If I have a particularly busy schedule, I will make time for a Rhode Islander, but if it's some national lobbyist I'll just postpone the appointment and say "maybe next week." Another form of lobbying is when organizations mobilize their grassroots or their membership, so you're inundated with postcards saying, "Vote this way, we'll be watching your record," or something like that. To me, postcards indicate a message, but I do not put a lot of weight in those because I recognize that constituents who are sending me postcards only have one side of the information and I figure, well, if they had both sides of the information perhaps they wouldn't be of that position. The best example of that was the tax bill that we just recently passed—there were some orchestrated letters for it—and in that particular bill there were some good things and some bad things. The people who supported it only knew of the good things. Fortunately there were more good aspects to it than bad and so I voted for it, but it was not solely because of the postcards that I got.

CLOSE UP: You mentioned the information provided by lobbyists. Do you think that you could do just as good a job without the lobbyists? If interest groups disappeared, would the work of Congress go on in the same fashion?

Representative Schneider: I think that lobbyists do serve a purpose in providing information. In order to get the information we need, we often have to call the associations, but I think we could eliminate the lob-

byists who make the rounds on the Hill. If we eliminated the whole lobbying process, however, the interest group associations and organizations might not compile their information in an easily readable or understandable fashion. Now we can call the Home Builders Association, for example, and say, "Could you give us your latest statistics on one, two, three, and four and what impact would there be on the housing industry if we injected a billion dollars in it today?" I think that's a real contribution and I wouldn't want to lose it.

CLOSE UP: Do you ever see yourself as a lobbyist in terms of lobbying your colleagues?

Representative Schneider: Constantly. Constantly.

CLOSE UP: What techniques do you use to lobby?

Representative Schneider: I use a very specific approach that is nonemotional. I think for a woman that is particularly important. I try to narrow my argument to three or four points. Whenever there are economic arguments, I try to emphasize those first, because more people in Congress are interested in economics than in the impact on water systems or the impact on the steel industry or something like that. If you're talking to someone from Maine that doesn't have a steel industry, they could care less. But if you talk about the overall impact on taxpayers, they're more interested. So, first of all I organize my points and my facts; then I say "Hey Jack, I'd really like you to cosponsor this bill with me. It would do one, two, three..." Keep it simple. Then I often tell them the arguments on the other side so that they know what they might hear, then I offer the rebuttal. I also look people straight in the eye, and I very closely monitor their reaction to what I'm saying to see if they appear receptive or if I need to send them more background information. Often I provide them something to carry with them. Sometimes you get the feeling that this person could be won over with a little bit more information or more work. Then there are folks who don't rely on the information. You have to know who your individual is. Sometimes you have to say, "Look, labor is 100 percent behind it." Then you know you've got their signature. Lobbying really takes a personal effort to know what the individual might be looking for.

CLOSE UP: Perhaps you could give an example of that. Last year, for instance, you were involved in putting together a coalition on education.

Representative Schneider: That's correct. In lobbying for education, the arguments that we put together were primarily arguments about equity. We pointed out that if there were a 25 percent cut in the overall education budget, the things that would be most severely affected would be aid to the handicapped, student loans and other items primarily hitting middle income people. Then, we would not so much say that certain organizations support us, but rather that Paul Simon, the chairman of education, is 100 percent behind this bipartisan alternative budget. If we mentioned a member of the leadership that was well respected, or even someone who was not part of the leadership that was well respected, people would be more inclined to support the bill. The best example of that is my work on Title IX, which is equal access to education for women. We have 145 cosponsors now. I was on the floor last night lobbying for this and I got nine people at the last minute. They said, "All right, Claudine, if you're recommending it, sign me up!" Some people know the kinds of things I support and so they'll cosponsor my bill. Others said, "I'll take this home and read up on it." With still others, I said, "You know Paul Simon just signed up, so he thinks it's OK." Then they'll usually say, "Oh well, all right, if you and Paul Simon..." So that's how it usually works.

Restrictions on Japanese Auto Imports Lobbying in the American Political System

Crisis in the American Automobile Industry

From the time Henry Ford rolled his first Model T off the assembly line and throughout most of the twentieth century, Fords, Chevrolets, Chryslers and other American automobiles were the favorites of drivers in the United States, Europe, Latin America and even Japan. In fact, as late as 1968 only 2 percent the cars sold in the United States were made in Japan. The "Big Three" corporations of General Motors, Ford and Chrysler made huge profits, directly employed more than 750,000 workers and created even more jobs in related industries that supplied automobile parts and materials. (e.g., iron and steel, synthetic rubber and glass).

By 1980, however, the once powerful auto industry was showing signs of running out of gas. In 1980 Americans bought 35 percent *fewer* American-made cars and 36 percent *more* Japanese-made cars than they had purchased in 1978. Instead of making huge *profits,* the Big Three corporations suffered staggering *losses* totaling $4 billion in 1980. Chrysler averted bankruptcy only because the federal government bailed it out with almost $2 billion in loan guarantees. Some 300,000 auto workers and 650,000 workers in supplier industries were less fortunate. They lost their jobs. Amidst all the other problems of 1980—Americans held hostage in Iran, double digit inflation, the nuclear arms race—the industry that once had symbolized America's status as an industrial giant was in deep trouble.

Although there were many causes of the crisis, public attention focused on the rapid increase of auto imports from Japan. As Congressman Bob Traxler (D-Mich.) warned his colleagues in the House of Representatives:

> I feel that I am present this morning as sort of a Paul Revere. I want to tell you the Japanese are coming. They are already here and they are coming in massive numbers.

In 1980 and 1981 Congress considered more than 20 bills intended to restrict Japanese auto imports. The International Trade Commission (ITC), an important regulatory commission in the executive branch, also was petitioned for action. In addition, both the Carter and Reagan Administrations were lobbied heavily to negotiate a trade agreement with Japan.

Many different interest groups became involved in the following case, which provides a vivid illustration of how the lobbying process works.

The "Import Restriction" and "Free Trade" Lobbying Coalitions

The first step in any lobbying effort is to organize all major groups with a shared interest into a *lobbying coalition.* These groups may disagree on other issues, but on the issue in question their common interest prompts them to act together. For example, although American workers and management blamed each other for the problems of the auto industry, they worked together against the Japanese.

In most cases there are three types of members in a lobbying coalition:

- *Primary Groups*—These are groups deeply affected by the issue. For them the lobbying effort is a very high priority, the outcome of which will significantly affect their interests. Therefore, primary groups usually are the key organizers of the lobbying coalition.
- *Government Officials*—When the issue in question affects their political supporters or constituents, the president, other executive branch officials, senators and representatives may become important members of a lobbying coalition.
- *Secondary Groups*—These are groups that are also affected by the issue but not as deeply as primary groups. They are important to a lobbying coalition because they broaden the base of support and may contribute to the strength of the lobbying effort.

The issue of Japanese auto imports gave rise to two lobbying coalitions:

- The *import restrictions* coalition, which lobbied in favor of limiting the sale of Japanese cars in the United States, vs.
- The *free trade* coalition, which opposed all such restrictions on trade.

Table 1 identifies the key primary groups, government officials and secondary groups in the import restriction lobbying coalition. The sampling of statements included in the table shows that all the coalition members had important interests at stake.

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Table 1:
Members of the Lobbying Coalition on Japanese Import Restrictions

Member	Position
Primary Groups	
United Auto Workers (UAW) Labor union representing 1.5 million workers in the automobile industry	United Auto Workers: *"As of this week (March 7, 1980), 201,000 auto workers are on layoff—176,000 of them indefinitely. Auto workers are suffering from a combination of the U.S. auto industry's past neglect of fuel-efficient autos and the greed of foreign auto companies, which have rushed in with imports in record numbers to fill the breach."*
Ford Motor Company One of the three major American automobile corporations	Ford Motor Company: *"Some 2,100 domestic dealers have closed their doors; some 140 domestic supplier plants have closed as well...and import levels for 1980 were a record high.... The bottom line is that all U.S. producers are operating at a loss—with Ford, GM and Chrysler each losing $1.5 billion before taxes in the first nine months of 1980."*
Government Officials	
Congressman Bob Traxler Democrat from Michigan	Congressman Traxler: *"Saginaw and Bay City, Michigan, in my district are listed as the eighth and ninth highest unemployment areas in the nation. Flint and Detroit are right behind. If our nation is coughing, we've got pneumonia."*
Senator Donald Riegle Democrat from Michigan	Senator Riegle: *"In my own state of Michigan, unemployment has been at the highest level since the Great Depression: 524,000 people are now jobless in my state.... More than one in nine of our citizens have been forced to turn to some form of public assistance.... These are stark and brutal facts. They present a grim picture of the human devastation to the people of my state."*
Senator John C. Danforth Republican from Missouri, Chairman of the Senate Finance Subcommittee on International Trade	Senator Danforth: *"These are extraordinary times. We all must recognize the critical condition of the U.S. auto industry, the fundamental importance of that industry to this economy, and the need to make some hard decisions to guarantee the continuing health of the industry."*
Secondary Groups	
AFL-CIO Largest labor union in the United States, representing workers in supplier industries of automobile parts, components, accessories and related products	AFL-CIO: *"More than twice as many workers in supplying companies have lost their jobs as have workers employed by the auto manufacturers. For many of these 1,000,000 unemployed auto and auto-related workers, their families and their communities, the recession of 1980—without prompt government action—will never end."*
Motor and Equipment Manufacturers Association (MEMA) Trade association of manufacturers of automobile parts, components, accessories and related products	MEMA: *"Imported vehicles will represent a market for replacement products that will nearly triple between now and 1985. This will potentially have a damaging impact among manufacturers of replacement components...since a great number of replacement products for foreign cars are imported into this country."*

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The Free Trade Lobbying Coalition

A basic law of American politics is that where there are supporters, there will also be opponents. Table 2 shows the key primary groups, government officials and secondary groups that opposed restrictions on Japanese auto imports. Their statements of position show that the interests of this "free trade" lobbying coalition conflicted with the interests of the "import restrictions" lobbying coalition.

Table 2:
Key Opponents to the Lobbying Coalition on Japanese Import Restrictions

Member	Position
Primary Groups	
American Imported Auto Dealers Association (AIADA) Trade association of the 4,500 imported auto dealerships and their 140,000 workers	AIADA: *"An arbitrary reduction in import sales of 400,000 units would cost us 26,000 jobs in our dealerships in the coming year. Not only would it cost jobs, but it would close some 400 of those dealerships this year, and 300 more would be closed in the coming year."*
Government Officials	
Reuben Askew Trade ambassador during the Carter Administration (1979-80)	Askew: *"The costs of imposing import restrictions on Japanese automobiles would far outweigh the likely benefits.... They would cause higher average prices for automobiles and increase fuel consumption at a time when reducing inflation and promoting energy conservation are paramount national objectives."*
Senator Adlai E. Stevenson, III Democrat from Illinois, Chairman of the Senate Banking Subcommittee on International Finance, (1979-80)	Senator Stevenson: *"There is no assurance that a cutback in imports would enhance the auto industry's competitiveness. On the contrary, trade protection reduces the industry's incentive to improve quality, to trim production costs and to moderate wage increases."*
Senator John H. Chafee Republican from Rhode Island, Chairman of the Senate Banking Subcommittee on Consumer Affairs, (1981-82)	Senator Chafee: *"The legislation currently before this subcommittee attempts to make a scapegoat of the Japanese auto industry.... The implications of what is being proposed here today go far beyond quotas and trade—for what is involved here is nothing less than the basic position of the United States as the world's foremost proponent of freer international trade."*
Secondary Groups	
American Soybean Association Trade association of producers and exporters of soybeans, for whom Japan is a major market	American Soybean Association: *"Once the United States raises trade barriers as a special favor to a troubled industry, other industries will demand similar treatment, and other nations will swiftly follow suit. A protectionist response to the automobile problem could jeopardize future U.S. exports."*
Consumers for World Trade Interest group opposing all restrictions on free trade	Consumers for World Trade: *"American consumers would be the principal victims of such protectionist actions. Next to a home, an automobile is the most costly purchase made by the average American household.... It is therefore imperative that the consumer be afforded the opportunity to shop, compare and buy with care an automobile that will meet his needs at the best possible price."*

Strategies for Lobbying:
Pass a Bill Through Congress

The import restrictions lobbying coalition had one central objective: to get the federal government to take action to restrict imports of Japanese automobiles into the United States. The free trade lobbying coalition also had one central objective: to block any such action.

The first confrontation of the two lobbying coalitions took place in the halls of the United States Congress. Passing a bill through Congress is the most common lobbying strategy. The full process of congressional action has been discussed in Chapter 2. For lobbyists there are three key stages of the congressional process:

1. Introduce a Bill
At least one representative and one senator must introduce the bill in the House of Representatives and the Senate. This person is known as the *sponsor* of the bill. He or she becomes a member of the lobbying coalition.

2. Committee Hearings
Both the House and the Sanate are divided into committees. Each *committee* is responsible for a particular area of policy: (e.g., agriculture, taxes, energy, defense, trade). Members of the lobbying coalitions testify at the committee hearings. In their testimony they try to convice the committee members to vote in their favor.

3. Floor Debate and Vote
If the committee passes the bill, it is sent to the full House or Senate (known as going to the *floor*). Since all the representatives and senators vote when the bill reaches the floor, lobbyists must try to influence each individual member.

The import restrictions coalition found its sponsor in Congressman Bob Traxler, (D-Mich.) and the representative of many unemployed auto workers. On March 5, 1980, Congressman Traxler introduced H.R. 6718. He made a speech explaining to his fellow members of the House of Representatives why they should vote for H.R. 6718:

> Mr. Speaker, today I have introduced tough legislation designed to repel the calculated Japanese invasion of our economy during a time of vulnerability and transition. The Japanese have been exporting more than cars to the United States: They have been exporting unemployment. More than 200,000 American auto workers have been indefinitely laid off in the past several months. One-third of that unemployment is directly attributable to the rise in imports.
>
> The time has come to force a commitment from them, and I believe the only route is for this Congress to give serious consideration to tough legislation. The Japanese must know that we mean business, and that we are not going to sit idly by and watch them put more Americans out of jobs.

Congressman Traxler's main objective in this speech was to convince his collegues of the need for legislation to restrict Japanese imports. His lobbying tactic was to pose the problem not just as Michigan's problem but as one of national concern:

> This unprecendented flood of Japanese-imported cars is not a regional problem—it has a major impact upon every congressional district in this country. The downturn in our domestic automobile industry, and the ripple effects it spreads throughout the economy, impact upon every state in the Union. This is a critical national problem.

The next step in the lobbying effort was to hold hearings on the bill. These hearings were held on March 7th and 18th by the House Ways and Means Committee and its Subcommittee on Trade. The chairman of this subcommittee was Congressman Charles A. Vanik, (D-Ohio). In his opening statement Chairman Vanik criticized the positions of both lobbying coalitions:

> Let me say several things. First, I am angry and disappointed and embarrassed that our automobile industry, the Detroit industry and some part of it in my own community of Cleveland, have failed America by failing to make the kind of automobile we need in a world of rising petroleum prices and shrinking supplies.... I think the reason that we have stayed with big automobiles is because there are big profits in them, rather than the smaller ones in which the profit motive might have been somewhat lessened.... Having said this, I would like to say some things to the Japanese representatives in the audience....
>
> I am appalled by the wave of Japanese automobile sales in this country in recent months. In February of 1979, for example, Toyota sold about 30,000 automobiles in the United States. This February the sales rose to 60,000. No nation allows vital industries to be destroyed by temporary surges of imports. It is accepted legal international trade practice to provide temporary import relief for an industry that is retooling or converting. This may be the situation we are facing in the auto sector.... What are the options before us? I hope that the witnesses today will be able to give us their reactions to my comments. And we would like to have the ideas that the witnesses can offer for a healthy American automobile industry in the decades to come.

More than 30 witnesses testified during the two days of hearings. Both the import restriction and the free trade coalitions were well represented. Senator Donald W. Riegle, Jr., (D-Mich.), tried to convince the 21 members of the subcommittee (14 Democrats, 7 Republicans) that "Japanese imports are at the heart of the problem:"

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> By sharply restricting the sale of U.S. cars in Japan and saturating the U.S. market with Japanese-built cars sold well below the retail price charged in Japan, the Japanese automakers will take some $10 billion from the United States this year as reflected in our balance of payments.
>
> In draining away $10 billion in scarce U.S. capital, Japan has also taken away the jobs of some 650,000 American workers and is now adding billions to the U.S. federal deficit in the form of lost tax revenues, unemployment compensation payments and trade adjustment assistance.
>
> This massive trade deficit of motor vehicles is hurting the value of the dollar abroad, costing record high interest payments here at home and adding to the soaring inflation.
>
> Further, the hemorrhage of this $10 billion capital to Japan represents money desperately needed here in the United States to finance the conversion of U.S. auto plants and enable the reindustrialization of America's automobile industry....
>
> In autos, Japan is not engaging in fair trade, has not for years, and shows every sign of squeezing every possible advantage from the inequities in the current trading relationship without regard to the strategic economic damage being done to America. This cannot be allowed to continue.

Although they agreed that a serious problem existed, the members of the free trade coalition disagreed with Senator Riegle's argument that Japanese autos were the cause. Robert M. McElwaine, president of the American Imported Automobile Dealers Association (AIADA), told the subcommittee that import restrictions "would be essentially counterproductive."

> If I could digest that entire 37-page testimony into a single sentence, Mr. Chairman, it would be that if the proposed restraints, either voluntary or legislative, on imported vehicles are designed to put back to work the 176,000 members of the United Auto Workers who are currently on indefinite layoff, it simply will not work.
>
> The reason these restraints will not help put these unemployed men back to work is simply because they are not out of work, as has been said before this committee earlier this morning, because of Japanese imports or any other kind of imports. They are out of work because of the failure of the domestic industry to anticipate the market, a reluctance to make the necessary capital investments in new products and more modern plants, and a general reluctance to give up what was a very profitable type of motor vehicle long after its popularity with the American buying public had ceased to exist.
>
> Moreover, such type of restrictions as have been proposed would be essentially counterproductive. To understand our position on this, I think it is necessary to look at the automotive market as it actually exists today. It has been portrayed as a market divided between imported automobiles and domestic automobiles. In truth, there is no such division.
>
> The market presently is divided between large cars and small cars, and small cars are runaway best sellers in this field. It is literally no contest whatsoever.
>
> Your out of work UAW members will be back on the job as soon as Detroit has converted all its products to modern fuel-efficient cars and not before. Restricting imports will depress the entire industry further than it is today.

Contrary to the goals of the import restriction coalition, H.R. 6718 was not approved by the committee. At least for the moment, the strategy of passing a bill through Congress was blocked. Over the next few months a second strategy—one of lobbying a regulatory commission—was developed.

Strategies for Lobbying: Appeal to a Regulatory Commission

Regulatory commissions are agencies of the executive branch that function partly like the Congress and partly like the courts. They resemble Congress in that their decisions, or *regulations*, have the force of law. For example, if a regulatory commisssion decides that a particular toy is unsafe, then the manufacturer may be forced to take it off the market. Regulatory commissions resemble courts in that their members can conduct hearings and issue orders. The president has the power to appoint *commissioners* subject to confirmation (approval) by the Senate.

Lobbying coalitions may also try to influence regulatory commissions to act in their interest. This is done by *filing a petition* that states the desired action and explains why the action should be taken. The regulatory commission then holds its own hearings, at which a lobbying coalition can again present evidence and opinions. A decision is then made by a majority vote of the commissioners.

The International Trade Commission (ITC) is the regulatory commission for international trade policy. One of its powers is to issue regulations restricting imports. However, according to a law passed by Congress in 1974 (called the Trade Act of 1974), it can only restrict imports if:

- an American industry has suffered "serious injury," and
- imports are proven to be "a substantial cause" of this injury.

By June of 1980, when it became evident that Congress was not going to pass a bill, the coalition favoring import restrictions brought its case to the ITC.

One newspaper report described the approach to the ITC:

> The United Automobile Workers Union petitioned the government today to raise tariffs and impose quotas on automotive imports, seeking at least a 20 percent reduction in foreign sales to give the do-

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mestic industry a chance to revamp to meet new market demands.

The union began a process that will take up to eight months before final determination, by asking the International Trade Commission to recommend import restrictions on foreign cars and trucks, contending they are causing "serious injury" to American manufacturers.

"With more than 300,000 UAW members in the auto industry laid off, there is a pressing need to restrain the flood of imports, particularly from Japan," Douglas A. Fraser, UAW president, said in a statement issued with today's petition.

The UAW petition argued that imports were mainly responsible for a 12 percent drop in production of domestic passenger cars since 1973.

The ITC held three days of hearings, October 8 through October 10, 1980. Both lobbying coalitions had opportunities to testify. The list of witnesses was even more extensive than it was for the congressional hearings:

Witnesses from the Import Restrictions Coalition

United Auto Workers
Ford Motor Company
General Motors
Volkswagen of America, Inc.
Automobile Dealer's Panel
Coalition of Automotive Component and Supply Workers
Automotive Materials Industry Council of the United States
Senator Donald W. Riegle, Jr. (D-Michigan)
Senator Carl Levin (D-Michigan)
William Faust, Majority Leader of the Michigan State Senate

Witnesses from the Free Tariff Coalition

Automobile Importers of America
American International Automobile Dealers Association (AIADA)
Japan Automobile Manufacturers Association, Inc.
Toyota Motor Sales, U.S.A.
Nissan Motor Corporation in U.S.A.
Honda Motor Company
Subaru of America, Inc.
Alfa Romeo, Inc.
BMW of North America, Inc.
Fiat Motors of North America, Inc.
Mercedes-Benz of North America, Inc.
Peugeot Motors of America
Saab-Scandia of America, Inc.
Volvo of America
Renault U.S.A., Inc.
Council for a Competitive Economy

The ITC was being lobbied not only by *American* workers and companies on both sides of the issue, but also by *foreign* companies whose interests also would be affected by the ITC's decision.

On November 10, 1980, the ITC announced its decision. By a bare 3 to 2 majority it rejected the petition for import restrictions. It did not doubt that a problem existed, but it did doubt that Japanese imports were the cause. In their report to President Jimmy Carter, the commissioners said:

> On the basis of the information developed in the course of the investigation, the Commission has determined that automobiles...are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Translated from the legal language, the simple message was another setback for the import restrictions.

Another battle had been lost, but the political war continued. More workers lost their jobs, and even General Motors—long considered the model corporation—was losing money. Yet Japanese imports grew. An article in the *Wall Street Journal* summarized the situation:

> Pressures continue to mount in Congress for restriction on Japanese auto imports, but the Carter Administration indicated it will leave the controversy to President-elect Ronald Reagan to resolve.
>
> The trade subcommittee chairman, Charles Vanik (D-Ohio), predicted such pressures will become "irresistible" in the next Congress if there isn't some slowing of Japanese imports.... And Robert Hormats, deputy trade representative, confirmed that he told Japanese officials at a recent economic meeting that the ITC decision "wasn't grounds for complacency" because there will continue to be "very substantial pressures on the United States for limitations."
>
> Some lawmakers warned that if a negotiated settlement isn't reached with the Japanese, they will push for mandatory limits on imports.

Strategies for Lobbying: Presidential Action

Given that auto workers traditionally had voted for Democrats, the Carter Administration had been unusually unresponsive to the lobbying of the import restriction coalition.

Ronald Reagan and the Republican party courted the votes of auto workers in 1980. It was not coincidental that the Republican National Party Convention was held in Detroit, the capital of the American auto industry. In one of his campaign speeches, candidate Reagan had promised that, if elected, he would help the auto industry and auto workers:

> Last week, I offered a proposal to increase the opportunity for sales of U.S. cars overseeas, while at the same time proposing a temporary shot-in-the-

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arm for the auto industry. This plan consisted of two parts:

•acceleration of orders for automobiles by the U.S. General Services Administration.

•modification of Export-Import Bank financing to encourage sales of U.S. cars in foreign countries.

This is the kind of common sense, workable program the auto industry needs. We need to take steps now, which (the Carter) Administration has failed to do, to alleviate the all-too-high unemployment in the auto industry.

However, there was at least one problem. Although Ronald Reagan had made vague campaign promises, he also was a believer in free trade and in reducing the federal government's intervention in the economy. Import restrictions were a form of intervention. As White House Press Secretary James Brady stated on March 19, 1981:

> The question of how to proceed with regard to imports was left open for further discussion by the president.... The president reemphasized that he remains committed to the principles of free trade and, in general, he believes the government should not become deeply entangled with the economic fortunes of any company or industry.

What the import restriction coaliton wanted was for the Reagan Administration to negotiate an agreement with Japan called a *voluntary export restraint* (VER). Under a VER, the exporting country (Japan) agrees to limit its exports to the importing country (the United States). Although it is called "voluntary," it usually is the result of pressure brought by the importing country.

But President Reagan was reluctant to negotiate a VER because he still supported the ideas of the free trade coalition. The import restriction coalition tried again to pass a bill through Congress. This time the coalition began with the Senate. On Febuary 5, 1981, S. 396 was introduced by Senator John C. Danforth, (R-Mo.), the new chairman of the Senate Finance Subcommittee on International Trade. His appeal to the Senate is transcribed in the *Congressional Record S. 396*:

> **Mr. Danforth** Mr. President, I rise today to do something for which I have little enthusiasm, but something for which there is a compelling national need.
>
> Senator Bentsen and I are introducing legislation to impose a quota on the importation of automobiles from Japan. The quota would be set at a level of 1.6 million cars per year for the next three years.
>
> The proposed quota is intended to do two things: provide the U.S. industry with a small degree of breathing room while it retools; and guarantee to the Japanese significant ongoing access for the U.S. market, thus preserving a degree of choice for U.S. consumers.
>
> I am not so naive as to believe that there will be no negative side effects of this action. Any limit on consumer choice is bad; any limit on free trade is bad. The first breeds inflation, at least in the short run, and the latter invites further restriction.
>
> Unfortunately, the alternatives are even worse. The failure of a significant portion of the U.S. auto industry will also be inflationary, as government is forced to pay billions in unemployment compensation, welfare, trade adjustment assistance and aid to depressed areas. The possible social cost is difficult to comprehend, since one of six U.S. jobs is related to the auto industry. In the long run, I believe a quota, in concert with other initiatives, will be anti-inflationary, since it will assist our industry in becoming more productive and competitive.

S. 396

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Quantatative Restrictions During 1981, 1982 and 1983.

During each of the calendar years 1981, 1982 and 1983, the aggregate quantity of automobiles that may be entered from Japan may not exceed 1,600,000. The quantitative limitation imposed under this section for each of such calendar years may be applied by the secretary on a calendar quarter or other intra-annual basis if the secretary determines that such application is necessary or appropriate to carry out the purposes of this act.

Hearings were held by the committee. Many of the same witnesses who had testified in 1980 were heard from again. The committee voted in favor of S. 396, and in early April it went to the floor of the Senate. If passed there and then by the House, it would impose even more restrictions on auto imports than had been considered previously.

This time the strategy worked. Faced with the likelihood of congressional action, the Reagan Administration and the government of Japan stepped up negotiations.

On May 1, 1981, a VER was signed. It allowed for a higher number of Japanese auto imports than S. 396 would have allowed if it had passed. But after more than a year of defeats, it was a victory for the import restriction lobbying coalition.

The UAW called it a "modest but very positive step." Senator Lloyd Bentsen, (D-Tex.), who was a cosponsor of S. 396, stated that:

> This isn't all we wanted, but it is significant. We will, however, be watching next year to make sure they are complying.

On the other hand the *New York Times* expressed

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some of the views of the free trade coalition in its editorial titled "Why Reward Failure in Detroit?"

> Giving the car makers the quota they want would be an open invitation for every ailing industry to turn first to Washington for aid or protection.... Aid must act as a catalyst for productivity, not as a reward for failure.

Conclusions

In the end, those who fought for relief of a failing American industry got part of what they wanted, and those who opposed them did also. The lobbying process was long and complex, involving different strategies, different sides to every argument, and many different groups and people.

The story of the auto import restrictions illustrates a number of features of the process of lobbying:

- When a serious problem exists within the society, the affected groups will try to get the federal government to take some action.
- These groups may have differing interests on other issues. If their common interests on one issue are important enough to them, they will join together in a lobbying coalition.
- Whenever there is a lobbying coalition in favor of something, there is likely to be another coalition lobbying against it.
- Lobbying can be targeted at both the legislative and executive branches. Within the executive branch there are different strategies for lobbying for regulatory commission action and for presidential action.
- In most cases the outcome of lobbying is a compromise. One side usually "wins," but it does not usually get everything it wanted. In addition, in a society such as ours, no group wins all the time.
- Action by the federal government to address the interests of a lobbying coalition is usually the end of a chapter rather than the end of the book. For example, one year after the VER was negotiated, more than 200,000 auto workers were still unemployed, and two of the three major American auto companies were not making a profit. Japanese cars continued to be sold faster than American cars. The lobbying coalition was active again.
- Lobbying never ends. It is a permanent part of the American political system, and one that many people believe is necessary to help bring some order to the American political scene.

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6. The Media

"Were it left for me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

—Thomas Jefferson

"Congress shall make no law...abridging the freedom of speech or the press"—The First Amendment could not have been clearer in its wording. Our Founding Fathers believed that no nation could be truly free unless its citizens enjoyed access to information and the right to speak out about their government. They also recognized that no democracy could function properly unless its citizens were sufficiently informed to make educated selections at the ballot box.

When the First Amendment was written, "the press" referred to the print media alone. Today, the press includes all forms of media, including television and radio. With the expansion in scope of the media has come a growth in its political role and influence. Today, we are dependent on the media for virtually everything we know about the workings of government and the nature of our political candidates.

Dependent as we are upon information provided by the media, it is critical that journalists adhere to high standards of honesty and objectivity. Of course no one can be completely objective, so it is important to realize the ways in which journalists may be affected by their own biases or the limitations of the information that they have to work with. And it is important to remember that most of our news comes to us through commercial media who entertain as often as they inform.

As you read the articles in this chapter, ask yourself why it was that the Founding Fathers were so concerned about freedom of the press and whether there are any circumstances that warrant limiting that freedom. Consider too how the insight into the profession of journalism provided in this chapter might help you to become a more educated consumer of news.

In This Chapter

Robert Pierpoint
A Free Press Is the Foundation of a Free Society
A National Security correspondent for CBS News discusses the need for freedom of the press.

Perspectives Panel
The President and the Press
Four former presidential press secretaries and two noted journalists reflect on the relationship between government and the press, and on the duties of a press secretary.

Hal Walker
The Journalist's Role Is to Inform the Public
A veteran television correspondent examines the responsibilities of a journalist and the need for objective reporting.

Kevin Kallagher
Picturing Politics: The Art of Cartooning
A political cartoonist for *The Economist* magazine discusses the role of the cartoonist in politics.

Case Study: The Media
How the Media Covered Vietnam
No American war ever received as much media coverage, or as much criticism, as the war in Vietnam.

Words to Know

censorship
electronic media
Fairness Doctrine
Fifth Amendment
Freedom of Information Act (FOIA)
investigative reporting
mass media
press conference
press secretary
print media

A Free Press Is the Foundation of a Free Society

Robert Pierpoint

Robert Pierpoint has been a CBS News reporter since 1957. In recent years he has served as a White House and a State Department correspondent. In 1982 he became CBS's national security correspondent. In all these posts he has frequently been confronted with the issue of whether or not to report news the government has labeled "secret." In the following speech, delivered to students at the University of Redlands in 1976, he discusses that issue. As you read it, ask yourself the question reporters ask: When does the public's right to know take precedence over concern for national security?

I came to the University of Redlands today to propose that together we take a good hard look at the current state of American journalism and what that means to you. My talk is titled "Update...1976," using the "unword one-word" that journalists employ in overseas cables to save the cost of two words and to convey the message that a continuing story is to be brought up-to-date. The continuing story is the 200-year-old experiment of a free press in a democratic society.

There are many issues within the general area of freedom of the press that we could discuss. I would like to focus on one subject of continuing controversy, both within and outside journalistic circles: government secrecy. How much of secret government activities does a reporter have a duty to report and the public the right to know?

Basically, I am opposed to what might be called self-censorship by reporters or news organizations. In most cases a clever enemy agent could learn anything a reporter might learn and in far less time. Let me give you an example. In early 1961 various reporters began to pick up evidence, both here and abroad, that the United States was organizing some kind of military action against Cuba. The *Los Angeles Times*, for example, told of a military base in Central America where Cuban refugees were being trained and equipped by men and funds apparently connected with the CIA. Eventually the *New York Times* and CBS News learned that the CIA was about to sponsor an invasion of Cuba directed at overthrowing Castro. Most of the sources for the information were Cubans in and around Miami. But after much discussion among top executives, CBS News and the *New York Times* chose not to publish the information, apparently on the grounds that it might compromise national security. That did not stop Castro's agents from picking up the same basic information, and perhaps much more, from the same kinds of sources available to the *Times* and CBS. As a result, Castro's soldiers were ready and waiting when the CIA landed at the Bay of Pigs. It was a badly conceived operation from the beginning, and the bloodshed, deaths and humiliation to the United States might have been averted if the *New York Times* and CBS News had published all they knew of the CIA landing.

But—and this is a serious problem for those of us in news—what would have been the reaction of the U.S. citizenery and government? Would the two news organizations in question not have been subjected to strong criticism for having unpatriotically given away American secrets and saved Castro? Sad to say, I think many in our society would still be calling us traitors, as some believe us to be because of our coverage of the Vietnam War.

Some Secrets, Yes; Too Much Secrecy, No

I do not suggest that the government reveal all its secrets to the public. In this day of instant communication, and when we do indeed still have potential enemies in the world, that would be suicidal. Certain military plans and operations of contingent nature in peacetime, certain technological and scientific information having military application, and, obviously, most plans and operations during wartime must be kept secret. But, in my view, far less secrecy than the government now affords itself would be perfectly adequate for our democratic system. Doubtless, you and I would be appalled at how much government information is kept secret for the convenience and protection of high-ranking government officials and their influential friends in the private sector. The recent bribery and political payoff scandals of Lockheed, Gulf Oil and other large corporations should be proof enough of that.

The Freedom of Information Act, passed by Congress, has helped uncover some secrets the U.S. government would like to hide. That act, for example, helped CBS news reporters gain information about some of the shadier activities of Charles "Bebe" Rebozo, Richard Nixon's friend in Florida. We won an "Emmy" for our investigative series on Rebozo's bank, and brought about some tightening of certain banking laws and regulations. But the Freedom of Information Act

is cumbersome to use, sometimes requiring, for example, a threat of a lawsuit or even the suit itself before the information can be obtained. By then it may be too late. Furthermore—and this is a criticism of myself as well as others in the media—the act is not invoked enough. But it is a step in the right direction.

Almost equally dangerous to the free press are recent rulings by judges in two separate areas, rulings that are still being tested in the courts. Several years ago judges began ordering reporters to disclose their sources of information. Some reporters, such as William Farr of the *Los Angeles Times,* have gone to jail to protect their sources and your right to know. Confidentiality of sources is one of a reporter's most important tools. Without that tool, a great deal that you now know or need to know about the operations of our society and our government would become unavailable.

Free Press, The Foundation of Democracy

The necessity for a free press in a free society simply cannot be overemphasized. It is absolutely essential. In fact, one cannot exist without the other. A free press is the first institution to be shut down by a totalitarian government of either the right or the left. Anyone familiar with the 1968 Soviet invasion of Czechoslovakia knows that the first casualties included the television broadcasts and the newspaper accounts of the suppression of the Czech people.

The press in communist countries is, of course, a mockery. Perhaps equally discouraging is the shutdown of the free press in Brazil, Chile, the Philippines and many other nations where democratic institutions have been or are being stifled under dictatorships of the right and left.

We are your eyes and your ears...in city hall...the state house...the White House. Democracy is based on the assumption that citizens will make the proper choices, but democracy also assumes that the citizens have the information on which to base those choices.

"Democracy is based on the assumption that citizens will make the proper choices, but democracy also assumes that the citizens have the information on which to base these choices."

That information must not only be accurate but also complete, which means that reporters must go beneath the surface of facts to find and convey background sufficient to put the bare information in its proper context.

Cutting down or cutting off a flow of information is harmful to our system. Without a free and aggressive press, America could become that "pitiful, helpless giant" that Richard Nixon warned about in another context—a giant seeing blurred images, listening to muffled sounds and lurching into disasters like the Vietnam War.

As my colleague, the great journalist Edward R. Murrow, used to put it, "We've got to make 'em itch." We must, because we are not the cheerleaders of our society, we are the critics. We deliberately seek to find and expose the faults and failures so you can correct them. Many Americans take their free press for granted because they have enjoyed its rights for so long that they are unaware of the constant struggle to preserve them. We in the media have a vested interest in this struggle, but so do you. I doubt that many of you will become reporters, but all of you must hope to grow and prosper in the free society.

Certainly we in the press make mistakes. These may bother you, as they should. But they are no excuse for limiting freedom of the press. In fact, despite what some self-serving, flag-waving politicians may say, nothing about our democracy is perfect, or ever will be. I have faith in our system, and I want it to survive for future generations. I warn you, however, that it will not do so without the support of a responsible, aggressive, critical but, above all, *free* press.

The President and The Press

Pierre Salinger, press secretary to President John Kennedy
George Reedy, press secretary to President Lyndon Johnson
Ron Ziegler, press secretary to President Richard Nixon
Ron Nessen, press secretary to President Gerald Ford
Seymour Hersh, Pulitzer Prize winning reporter for the New York Times
Liz Trotta, former reporter for NBC News

Speaking at the Presidential Press Secretaries' Forum held at Gonzaga University in Spokane, Washington, four former presidential press secretaries and two leading journalists discussed the relationship between the press and the government, and the role of the press secretary.

The forum was filmed and made into a program for public television titled "Some of the Presidents' Men," by KCTS in Seattle and KSPS in Spokane. Mike Kirk was the moderator. The following article is excerpted from the transcript of the show. It provides some thought-provoking illustrations of how we learn what is going on in the White House and the world.

Mr. Kirk: *The four former press secretaries were at the forum to talk about the presidents they served and the problems they faced. They spent hours giving a view of the press secretary as a punching bag for the press...as a trusted advisor to the president...as a complex mixture of presidential mouthpiece and reporter.*

Roles of the Press Secretary and the Press

Mr. Reedy: In the White House, the way the president wants it to be handled is the way it's going to be handled—which is as it should be. The press secretary is there only because the president can't see the press as much as the president should see the press in a democracy. And the press secretary is going to say what the president would say. If he doesn't, then he's going to get fired, because nobody elected the press secretary to run the government.

Mr. Ziegler: That's right; he's not out there because of his personality or because of his own point of view. He is a direct reflection, should be a direct reflection, of the policies set by the president of the United States.

Mr. Salinger: The president himself is the person who decides what kind of press policy you have. I mean, if he goes into the White House saying "OK, I'm going to have an open, above-board honest, direct relationship with the press," that's the way the press secretary is going to operate. If he says, "I'm not going to tell the press anything, this place is going to become a fortress, we're going to keep our secrets in here," that's the way the press secretary is going to be, too.

Mr. Kirk: *The press secretaries had very definite ideas about the press. They blamed the press for not getting some news stories to the American public. When asked about the cruise ship atmosphere, where reporters and politicians in the White House are sealed off from the outside world, and grow to depend on each other as friends and co-workers as well as sources of news, many of the former press secretaries agreed it is a problem.*

Mr. Ziegler: The White House press is somewhat isolated, but generally does a good job. I don't think they probe for stories as much as they should. But I think that to a great extent that's because of the nature of the daily activities of the White House. I think many of the White House reporters would like to get behind individual stories to a greater degree than they in fact have time to do. That, I think, is a conflict they have. I think it troubles many of them.

Mr. Kirk: *Hersh seemed to agree with their assessment of White House reporters.*

Mr. Hersh: Well, I'm in a dispute with some of the people at the Times because certainly some people there think it's the greatest job in the world, covering the White House. I mean some senior editors of the Times think it's a marvelous job. I think it's one of the worst jobs. Why? You're sort of a paid stenographer.

Ms. Trotta: The press secretary is a guy you're dependent upon for news. Now supposing you are assigned to the White House beat. If that is your regular beat, you cannot afford, as a reporter, to become an enemy of the press secretary or you are out. A truth to tell, the Watergate story was broken by two kids who had nothing to do with the White House, and a city editor—not a political editor. I think that for those who are on beats where they are dependent, it's kind of a symbiotic relationship. I think that hurts what gets in the newspaper or on television.

The Adversary Relationship

Mr. Kirk: *The secretaries say they sense a new hostility from the press corps. They say it's partly because of the Watergate reporting done by Bob Woodward and Carl Bernstein of the Washington Post. They said the new approach to journalism is a mixed blessing.*

Mr. Salinger: There's a degree of hostility between the press and the government today that is a product of the era of Watergate and Vietnam, which has changed the atmosphere around the White House an awful lot. Even though he has this cocoon, it's a tumultuous life for the press secretary of today. I look back on the time when I was there. There was an adversary relationship which is fundamental to the idea of democracy. But there was not a hostile relationship in those days. I read through my old press briefings with wide-eyed amazement. Today, I'd never get away with what I was getting away with then, in the early 1960s.

The whole Watergate syndrome, the resignation of Nixon, has kind of created a pendulum relationship between the press and government. Today, I think that a lot of people want to prove that they too can be Woodward and Bernstein. In my opinion, it doesn't have to go as far as it's gone. It obviously should not go back to the days when it was a cozy relationship either.

Mr. Kirk: *Former president Gerald Ford's press secretary, Ron Nessen, insisted that his feelings of hostility against the press had come not form his White House experience, but from his days as an NBC News correspondent.*

Mr. Nessen: The harshest critics of the press today, and as far back as I can remember, are journalists—serious, thoughtful journalists. The things Walter Cronkite said a while back to the Radio and TV News Directors Association, criticizing television news, are far harsher than anything I ever said. Perhaps far harsher than anything Spiro Agnew had to say. The people in television are the ones who know best what's wrong with television. I mean, the television correspondent who has just called his news director and said, "I have a story for the program tonight. It's a complicated story. It might take 3 minutes to do it justice." And his editor says, "You have 45 seconds." That's a real critic of television.

Mr. Kirk: *The press secretaries seemed to accept the adversary relationship between the press and the government. But they saw themselves as innocent middlemen in this battle, simple and honest transmitters of information...When the forum began, the first topic was deception.*

Mr. Ziegler: Certainly much of the information I gave about Watergate at some point turned out to be incorrect. That is an understatement, to say the least. I think that what goes to the heart of the issue is that the information I gave as press secretary about Watergate was incorrect because I was not told what the facts were.... In fact, historically it has been shown, I was a part or a victim, to use that word, of the Watergate cover-up that did take place. Have I learned anything from it? I've learned that anyone who holds the position of press secretary or spokesman must be aware that the information he provides is only as good as he is able to find out or is told. I suppose, when I look back on it, I didn't find out enough, and perhaps I myself did not pursue the issue to as great an extent as possible from the inside. The result, I think, is history.

Mr. Kirk: *Ron Ziegler seemed ready to admit his mistakes. He made no attempt to defend his president's actions during the Watergate years. So the expected battle between Ziegler and the press never materialized. Instead, the fight became Vietnam. The time frame: the Johnson presidency. And the issue: the way in which the government receives information and the information the government decided to reveal.*

Mr. Reedy: Unfortunantly, there's a picture of the White House as a place where, during a crisis, all information is flowing in and out in an orderly form, as if the president is having placed before him careful, reasoned judgments, information that has been tested and checked. Therefore, when the president makes a decision, and the decision goes sour, which it does about 75 percent of the time, because that's the normal human batting average on any decision...the assumption is, 'He did it deliberately.' The president is not allowed the excuse of slobbery, which is why most things go wrong in human affairs, because of this strange assumption that what is coming to him is absolutely weighed information. Now, the reality is quite different.

Mr. Hersh: Who's responsible?

Mr. Reedy: Wait a minute. You haven't heard the statement if you ask who's responsible. I was there the night of the Tonkin Gulf. And what happened was a very simple thing. We were getting fragmentary information. The reason we were getting fragmentary information, Sy, is because the only man that really knew was the skipper of the ship. And the skipper of the ship was where he ought to be. He was up on the bridge, defending his ship. He didn't have enough time to be down in the hold with a typewriter, composing a very careful, reasoned message. What the White House was getting was the same sort of thing it gets in every crisis—which is because the people on the scene, who are the only ones who really know, are too busy doing what they should be doing.

Mr. Hersh: Why didn't you tell the people? You didn't tell the people that. Instead you gave briefings.

Mr. Reedy: You know what happens then is everyone in the White House assumes that they know what's happening—just as everybody else makes the same assumption. Now, what happens here is that the press will buy the thing just as the president buys it, and the people in the White House. The press, however, does not have to make decisions. This is a very fundamental difference.

Mr. Hersh: I think the reason the people think otherwise is because I vividly recall the day after the Gulf of Tonkin, all the briefings that went on with people, with pointers and the air of certitude. You just casually initiated the words "Gulf of Tonkin," much to my amazement tonight—and you now tell us that even at the time you were aware that there was fragmentary information. I think it was misleading to be as full of certitude and rectitude as the administration was. I believe—and I think a lot of other journalists, as well as social historians and philosopher kings, would agree—that there was deliberate deception and an attempt to mislead. And that it was used as a pretext.

Mr. Reedy: This is being turned into a classic argument that I have been listening to for years. Every journalist sits around and talks about those liars and politicians, and in my days in the White House people used to sit around and talk about all those liars and journalists. The Washington Post people were liars. And the truth is a rather simple one. Those people see different worlds. And neither one has the size or the bigness to understand that.

Audience Question: You say information is very fragmented and isn't whole. If the president of the United States doesn't have the best information in the world, what kind of decisions is he making?

Mr. Reedy: I think there is a certain point where you have to realize that people act on the best information they have. The best information, in many circumstances, and I don't care whether it's the White House or any place else, is not going to be the best. And I think the more you get into this thing, the more you're going to find it out for yourself.

Audience: Okay, then, let me put it this way. Why can't the president of the United States get the best information in the world?

Mr. Reedy: He does get the best information in the world. Sometimes the best information in the world isn't any good.

Summary: A Balanced View

Mr. Kirk: *Surprisingly, Ron Ziegler, perhaps the most embattled former press secretary, offered the balanced view of press-government relations.*

Mr. Ziegler: The relationship between the presidency and the press has been one of an adversary relationship, with points of conflict over the years. Historically we know that. In the late '60s and certainly the '70s, there were points of great tension that built. We have a modern president and a modern press. Certainly attitudes amongst the press, including television and broadcast journalists, have changed. I lived through it, so I saw it first-hand. I have some excellent first-hand knowledge of this.

I do feel that we are running a risk at this point of the White House and administration becoming too programmed in their press relations, becoming too massive and manipulative. Any president or any public official decides what he's going to say about how he's going to do something, based on the end result as to how it will be perceived. But I think you can go too far in the attempt to manipulate and to program public information. It hurts the administration when they do that...You show me an administration or group of press officers who attempt to over-program, and I'll show you press officers who do not have much credibility because the press sees through it, and the credibility is hurt. So I think it's something that definitely must be examined and looked out for in the current administration and future administrations.

Mr. Kirk: *In recent years, the main issue has become information. In Watergate, the emphasis was put on the cover-up—the lying—instead of the actual break-in. In Vietnam, many people were disturbed by the war. But many people first became very angry because of the way in which information about the war was handled. They were upset when they found out the government was misrepresenting what was happening in the war. So, in a sense, press secretaries were not unimportant. Their roles as advisors to the president, and the ways they dealt with the press, helped shape those events.*

What am I Reading?

As readers and listeners it is very important that we develop the skills to differentiate between fact and opinion in the news. An article on the editorial page, or one which is labeled "news analysis" or "commentary" obviously presents the opinion of the author on a particular subject. Others are supposed to "report the facts"; as Hal Walker writes in the preceding article, to inform the public without attempting to persuade or direct.

In reading about politics you probably have discovered that it is not that simple to separate fact from opinion. Many times they are mixed together in a single article. Some passages present the facts while others analyze or comment on them. Consider the following examples of news, some of which appeared in the very same article. These passages are excerpted from the July 9 and 13, 1977 editions of the *The Washington Post.*

Label each of these examples "FACT" or "OPINION." When you next read a newspaper, think about whether what you are reading is fact or opinion.

_____1. By voting this week to continue the temporary ban against operations of the Concorde at Kennedy Airport ... the Port Authority's members have abused their power.

_____2. President Carter yesterday urged Congress to vote initial production funds for a new generation of neutron nuclear weapons ... Carter said, "It is my present view ... the neutron weapons are in the nation's security interest."

_____3. The Panama Canal was high on Carter's list when he took office. A week before his inauguration he privately told members of Congress he planned to resume negotiations on a new treaty.

_____4. The Panama Canal is, perhaps, the last vestige of American innocence — or arrogance. They go hand in hand. For decades it was a proud symbol of the Flag, of American daring and might, the passageway that made the Pacific an American lake.

_____5. Since the collapse of the American-backed regimes of Vietnam, Laos and Cambodia, the United States has granted sanctuary to about half of the 300,000 refugees who have fled these countries. The White House is considering the admission of 15,000 more.

_____6. Still this is not a problem that lends itself to the business-as-usual play of American bureaucracy and politics. The refugees are out there in misery, in the refugee camps and on the high seas.

_____7. The Senate Foreign Relations Committee yesterday tentatively approved a treaty that would allow Americans imprisoned in Mexico to serve out their jail sentences in U.S. prisons ... One of the problems involved in ratifying the treaty with Mexico is the possibility that some returned Americans might seek to bring an action through the American court system to overturn their Mexican convictions.

The Journalist's Role Is to Inform the Public

Hal Walker

Hal Walker is a veteran television correspondent who has covered every president since Lyndon Johnson. He is now an overseas correspondent for ABC News. Previous articles in this chapter have discussed government's responsibility to the press; this article presents Mr. Walker's thoughts on the obligations of journalists in a free society.

The thoughts I have on journalism do not come from an academic background in this field. As a matter of fact, I've never taken a journalism course in my life. Instead, the conclusions I have reached and the ideas I have about journalism come from nearly 14 years of professional experience. I don't look at them as final answers, but as answers which satisfy me now in a process, which is a continuing one and a learning one.

Fundamentally, I believe that the basic role of journalism and journalists is to inform the public. I do not believe it is to convince. It is to give the people the information they need to be able to make informed and intelligent decisions about the things that affect their daily lives. Weather reports are as essential a part of the information that the journalist can impart to his public as anything else. A weather report gives you the information that you need to decide how you will dress, what appointments you will make—in effect, how you will run your life for the given period of time affected by that particular report. I do not believe it is the role of the journalist giving weather reports to convince readers, viewers or listeners to wear a certain type of clothing or to cancel certain types of appointments. The reporter is simply there to provide the people with the information that they need.

News Must Be Honest and Factual

This is not to say that there is no legitimate role for editorialists, commentators or people like that. I believe very strongly that those who are going to perform as editorialists and as commentators must very clearly label their material as such.

I would like to mention here the subject of advocacy journalism which has become rather fashionable these days, especially with young people. For my part, I cannot accept the concept of advocacy journalism. I do not believe that the journalist can put himself in the role of an advocate and still expect to be accepted as an objective reporter of the truth, or even of the truth as he sees it. Objectivity has gone out of fashion as a word in journalism because we understand that it is impossible for any living human being to be completely objective about anything. Although the ideal may not be attainable, I believe it is a basic responsibility of the serious journalist to strive as mightily as he can to be as objective as possible.

Perhaps we should substitute for objectivity the words honest, factual, careful and fair, because these are the basic standards by which the work of any journalist must be measured. It is very easy, when talking about journalism, to talk about those standards as ideals towards which we strive. In a day-to-day practice, these ideals are not always reached. The reader, listener, or viewer, as a result must take responsibility to critically evaluate journalistic reports.

Pitfalls of Television News

The nation's leaders, or the average television viewer or the radio listener on his way to the office must exercise some degree of responsibility for what he takes as valid news. I suppose this is why I become so concerned when I learn that for an extraordinarily large percentage of Americans, the only source of daily information is the evening television news program. That, of course, is very sad. It is, in fact, a travesty. More importantly, it places a greater burden on the evening television news program than any one medium of journalism should be forced to carry. I believe it is very much the responsibility of the individual consumer to weigh, to check and to compare his news sources. From among the many sources of information available, he or she can thus arrive at informed conclusions about which of the many sources is the correct one.

The president of CBS News has been quoted as saying that he wished at the end of the CBS evening news, instead of having Walter Cronkite say, "and that's the way it is," he should say instead, "for further information, consult your local newspaper." I would give that advice to anyone who is honestly looking for a truly balanced picture of the day's events.

The one thing that sets a democracy apart from, and yes, above many other forms of government is the fact that major decisions that affect the citizenry are made by the citizenry. Therefore, to function at its highest level, a democracy is dependent upon an informed, intelligent and interested body of citizens who will be called upon to make the decisions that affect us all. The one thing that a free press can do is to make avail-

able the factual information that free citizens need in order to make intelligent decisions.

That same free press cannot and should not be asked to make decisions for the people. It should neither be allowed to strain the information nor to censor it. Above all, it must never knowingly distort or falsify the facts. I happen to have an unwavering faith in the ability of people to make decisions for themselves that are in their best interest, provided they are given access to the information that they need to know.

Who's Who in the Press

Match these media personalities with the following descriptions.

__ A. Jack Anderson	__ F. James Reston
__ B. Barbara Walters	__ G. George Will
__ C. David Broder	__ H. Frank Reynolds
__ D. Garry Trudeau	__ I. William Buckley
__ E. Dan Rather	__ J. Marvin Kalb

1. Author of *Kissinger* and television reporter on foreign affiars.
2. Long-time columnist with *The New York Times*. Very influential.
3. Political cartoonist famous for his *Doonesbury* strip.
4. The best-known "conservative intellectual."
5. Television reporter best known for interviewing the famous.
6. Investigative reporter syndicated in newspapers nationwide.
7. Liberal columnist with *The Washington Post*. Considered by many the most perceptive political reporter of our day.
8. ABC anchorman.
9. Conservative columnist with *Newsweek* and television commentator.
10. Replacement for Walter Cronkite as CBS anchorman.

Picturing Politics: The Art of Cartooning

Kevin Kallagher draws political cartoons for The Economist *magazine, a prestigious weekly newsmagazine published in London. Named "Cartoonist of the Year" in Great Britain in 1982, Mr. Kallagher has recently been syndicated in the United States. In this interview with CLOSE UP, he discusses cartooning and its role in politics. He also provides insight into the way cartoonists work by describing several of his cartoons, reproduced here with his permission.*

CLOSE UP: What should a good political cartoon do?

Kallagher: The effectiveness of the political cartoon is the fact that it is not writing. It is a drawing that is completely different from anything else on the editorial page. Because of that fact it is usually the first thing anybody reads on the editorial page. Sometimes it is the only thing that people read on that page. If you can convey a complete message in a drawing you will probably make a very strong impression because of the contrast with the stuff around it. What you want to try to do in a political cartoon is to get a complete message across. There are several components in the ideal cartoon. One, the message. Two, in order to get the message across you need a vehicle. I have heard one person describe the vehicle as something with four wheels on it. One wheel is humor: Humor can help you get the message across. Another wheel is caricature: a good caricature can get the feeling across. A third wheel is the design of the drawing: An interesting design helps get the message across. And then the final wheel is proper use of wording. It's like telling a good joke, you have to phrase things just the right way in order to have the whole thing read properly.

CLOSE UP: Do you think you can say as much in a political cartoon as in a typical editorial?

Kallagher: A cartoon is sort of a knockout with a single punch rather than a long fight. In an editorial you can take any issue and break it down piece by piece and evaluate it, then gather all the information you have and come up with some conclusion. In contrast, a cartoon can sacrifice a lot of the small details to get a strong idea across. That perhaps is where the power of the cartoon lies. Its strength is in saying one thing.

CLOSE UP: How much does a cartoonist need to know about politics to be a good cartoonist?

Kallagher: That probably depends on who you are working for. If you are working for a paper where the audience is not politically sophisticated or is not interested in politics you don't need to know a lot about it. It is also very easy up to a certain level to hide your lack of knowledge of politics by making funny drawings. It's like Bob Hope or Johnny Carson making political jokes. They're not making insightful political jokes but they use politics as a scene. A lot of people can do that, but when you get more sophisticated you must know a lot about politics. I think that the more you know about politics the better cartoonist you are. You can find some people like Jeff MacNelly who started working for a small town paper that nobody ever knew and within a couple of years was one of the most famous cartoonists in the country, mainly because he knew his politics and it came through in his cartoons.

REV. BILLY GRAHAM

CLOSE UP: How powerful is someboby like Jeff MacNelly?

Kallagher: Most cartoonists will agree that cartoons have no power whatsoever. The funny thing, though, is that everybody who watches cartoons think they have a tremendous amount of power. Historically, there have been times when cartoons have had a great effect. The father of American political cartooning, Thomas Nast, was almost personally responsible for the downfall of Tammany Hall and Boss Tweed. Nixon just hated the way that Herblock (the cartoonist for the *Washington Post*) used to draw him with a five o'clock shadow. Nixon almost had an obsession with Herblock's portrayal of him. So a cartoonist can have a grinding effect on a politician and perhaps on how other people view him.

CLOSE UP: The caricature of Billy Graham struck me as one for which you need to know the story. What were you trying to say in that caricature?

Kallagher: That caricature is an interesting one because I wanted to say a lot more and *The Economist* edited it out. Originally I was going to have a dissident chained to the platform as he would be to a cell in a prison. The idea is that Billy Graham went sort of wide-eyed and naive to the Soviet Union and came out spouting about good feelings between religious people there and the religious people in America, more or less ignoring some things right under his nose. So I wanted to transmit the idea that you had these contrasts and that you had a basically naive person who had terrible things going on right under his nose. When you look at the cartoon your eyes are drawn straight to his eyes. As your eyes drift away from his eyes you become painfully aware that he is staring right at you and missing anything that might be around him. It probably would have worked a lot stronger if as your eyes drifted down toward the podium you would have seen a dissident sitting right next to the Bible. So I think that the cartoon, although it is a good drawing and the face is good, lost a lot of what it could have said had it been completed properly.

CLOSE UP: Let's look at the one of the Ayatollah Khomeni. It's not a funny cartoon; it's more thought provoking. What was it you were trying to convey about the Ayatollah?

Kallagher: In the Khomeni cartoon, I was trying to convey that Islam is firmly rooted in Iran and it is

spreading to neighboring countries. That could cause problems particularly, of course, in Iraq, but also in other Arab countries and places like Pakistan. So the message is that he is a firmly rooted menacing figure and also that he is the center of a whole system that is beginning to raise its ugly head in other areas as well.

CLOSE UP: The whole thing seems to convey a sense of power and stubbornness.

Kallagher: Exactly.

CLOSE UP: The Falklands drawing is a cartoon, whereas the other two are caricatures. What were you trying to say there, and what makes it work?

Kallagher: In this one I was trying to get the message across that the media quickly shifted their attention from El Salvador to the Falkland Islands. At the beginning of the Falkland Islands crisis, the media that had been totally concerned with El Salvador all of a sudden turned their heads to the Falklands, and did so quite happily. I tried to make that work by giving the sense of the media as a massive block preying on El Salvador and El Salvador as this little thing for the

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Editor's Note: Jeff MacNelly, 34, is a two-time winner of the Pulitzer Prize for Editorial Cartooning. His editorial cartoons appear three times a week in the *Chicago Tribune* and in syndication in more than 450 other newspapers. MacNelly is also the creator of the popular comic strip "Shoe."

western media to play with. So you want them to look big and menacing hovering over El Salvador. I portrayed El Salvador as a smoldering little mass and then drew a visual parallel between the smoke of the smoldering country and the smoke of the fleet going down toward the Falklands. That way your eye is caught between two extremes. Then the final trick of the whole cartoon is that your eye probably looks at the cartoon for 5 or 10 seconds before discovering the little character hidden underneath the media trying to heat up El Salvador again to get back everybody's attention. You started in El Salvador, saw the smoke, shifted to the Falklands and your eye went around in a circle until you saw this little guy. That not only makes the cartoon work better, but whenever anybody discovers the little person, they think they have accomplished something—and I feel like I accomplished something.

abc U.S.News & WORLD REPORT
The Washington Post
Newsweek
THE WALL STREET JOURNAL
TIME CBS
The New York Times
PBS NBC

How the Media Covered Vietnam

"With public sentiment, nothing can fail; without it, nothing can succeed. Consequently, he who molds public sentiment goes deeper than he who enacts statutes or pronounces decisions."

Abraham Lincoln

"If the mass media persist in excluding a significant sentiment or preference from public debate, that preference will eventually be ruled out as an alternative deserving serious policy consideration, and the policymakers will be virtually forced to choose among those options the media consider worth presenting to the public. The public cannot support an option about which it has little knowledge or awareness."

Ernest Lefever
T.V. and National Defense

In the last century, technological advances in communications have revolutionized the newsgathering process and have brought an onslaught of information to news audiences around the world: more information, in fact, than the reading and viewing public can possibly digest. A major responsibility for members of the press, therefore, is not just to report news but to select the stories that will be "news." This selection process—determining both what is newsworthy and how it is presented—allows newspeople to exercise great influence over the public's perception of events.

An examination of the American experience in Vietnam provides an excellent example of how the media can influence public opinion and reveals some of the problems inherent in the news selection process. While reading this case study, consider the following questions: What is news? What *should be* news? How do newspeople decide what to cover and what criteria they should use to determine what is newsworthy?

A Thirty-Year War Begins

In 1945, shortly after the end of World War II, the Vietnamese Communist party, under the leadership of Ho Chi Minh, launched a campaign for independence against the French colonialists who had ruled most of Indochina since the late 19th century. The bitter political campaign grew quickly into a military struggle that was to last nearly 30 years.

In the beginning, both sides appealed to the United States for aid. Ho Chi Minh addressed eight letters to President Harry Truman asking him to intervene on behalf of the Vietnamese. But the president was reluctant to deal with a communist since the Cold War was at its height and the belief in a worldwide communist conspiracy to subvert democracy was widespread in America. Truman never communicated with the Vietnamese and eventually decided to give economic and military aid to the French, hoping to win their support for a wide array of postwar European issues. In 1950, Truman gave the French $10 million, a decision that set a precedent that was followed by the Eisenhower Administration. Every year U.S. aid increased until, by 1956, America was spending $270 million annually on the war in Vietnam.

The commitment of American resources to Vietnam was hardly noticed at home and met little domestic opposition. A large factor was that the press gave scant coverage of the war for independence in the tiny French colony in remote Southeast Asia. Most newspapers and magazines ignored the war completely, and few stories could be found in such major newspapers as the *New York Times*, the *Washington Post* and the *Chicago Tribune*. Therefore, few Americans knew that their tax dollars were supporting France's war effort, even by 1954, when French defeat was imminent.

Media Coverage of Vietnam One-Sided or Ignored

The lack of information about the Vietnamese conflict was not an isolated case. According to a recent study sponsored by *Congressional Quarterly*, entitled "Mass Media and American Politics," foreign affairs news coverage constitutes only about 11 percent of all stories in American newspapers and about 16 percent of all stories on national newscasts.

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Editors, publishers and producers defend this policy, arguing that the low demand for news from abroad causes them to focus on domestic issues. Peter Braestrup, head of the *Washington Post's* Saigon bureau in the late 1960's, points out, "American newspapers are primarily locally-oriented businesses, and resources are allocated accordingly.... Then as now, in terms of space allotments, news from abroad ranked well below the comics and sports, and below local, state and Washington news."

The kind of coverage an issue receives is at least as important as the frequency with which stories appear. Americans expect a news story to convey the full breadth of information available to journalists. But during the early stages of the war, reporters relied almost exclusively on State Department press releases and interviews with American and French officials; the Vietnamese viewpoint was ignored. The press, therefore, never really examined the basic assumptions that led the United States to intervene in Vietnam.

A typical article describing Truman's decision to support the French appeared in the *New York Times,* headlined "U.S. will give military aid to France and Indochina in defense against Reds." The article did not mention the nationalist drive for independence against the French, but rather described France as the liberator of the Vietnamese people:

> The French feel they are the only force on hand to oppose the extension of communism toward Southeast Asiatic areas of vast interest to the whole North Atlantic community of nations. They argue that they are not just protecting the French union in Indochina, and...the least Washington can do is make available more equipment and economic aid as soon as possible.

In an editorial the same week, the *Times* said, "If Indochina is to be saved for a chance for freedom, it must be saved promptly. The French will try to persuade us of that fact, and we will do well to be persuaded."

One-sided media coverage continued throughout the 1950's. In 1954, procedures had been agreed upon for French withdrawal from Vietnam and for the gradual unification of the country under Vietnamese leadership. But the United States opposed the agreement. Fearing that the popular Ho Chi Minh and the Vietnamese communists would come to power in the free elections scheduled under terms of the Geneva accord, the Eisenhower Administration decided to disregard the agreements, and attempted to create a separate noncommunist democracy out of the southern territory of Vietnam that could act as a buffer against "communist aggression" in the North. In the beginning, U.S. officials were optimistic, asserting that the new president installed by the United States, Ngo Dinh Diem, was on the way to rebuilding the South Vietnamese economy left in ruins by the French, and to solving the social problems caused by a decade of war.

"American newspapers are primarily locally-oriented... Then, as now, in terms of space allotments, news from abroad ranked well below the comics and sports, and below local, state and Washington news

American press reports reflected the administration's optimism. The *Saturday Evening Post* proclaimed that, "Two years ago at Geneva, South Vietnam was practically sold down the river to the communists. Today the spunky little Asian country is back on its feet, thanks to 'a mandarin in a sharkskin suit who's upsetting the Red timetable.'" The U.S. government, the American press and, thus, the general public supported the new regime firmly and enthusiastically; but, as Frances Fitzgerald explains in her book *Fire in the Lake,* "In truth few Americans in or out of Washington knew anything about the country."

Few Americans knew that the Diem government was corrupt and anything but democratic. They were unaware of Diem's attempts to consolidate his personal power by appointing his closest family members to important positions in the government. And they had not heard of his campaign against nearly 20,000 political opponents, who were placed in "re-education centers" that resembled concentration camps. Most importantly, the American public was unaware of the growing U.S. involvement in South Vietnam.

It was not until 1961, when a popular movement against the corrupt Diem regime grew into a civil war between government troops and South Vietnamese insurgents known as the "Vietcong," that the American news media sent in a significant number of journalists. By then, American involvement was growing into a major military commitment, as President Kennedy increased the number of U.S. military "advisors" from 500 to 10,000 men. Press reports that had formerly given an unconditional stamp of approval to American operations in Vietnam began to change, and Americans suddenly realized that they were involved in a war they knew nothing about.

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The American Press Discovers Vietnam

"The American commitment has been badly hampered by irresponsible, astigmatic and sensationalized reporting."

General Earl Wheeler
Chief of Staff of the Army, in 1963.

"The press enabled the country to see—gradually—what a disaster the war was. Had the government gone unchallenged, it would have been a greater tragedy."

Lee Lescaze
Vietnam correspondent for the *Washington Post*

In 1959, an influential journalist named Wesley Fishel wrote an article for the *New Leader,* entitled "Vietnam's Democratic One-Man Rule," in which he hailed Diem as "a leader who speaks the language of democracy...who governs a republic in accordance with the terms of a constitution." Four years later, Robert Trumbull, chief of the *New York Times* Southeast Asia bureau, wrote, "The Diem government for years was considered authoritarian and oppressive. It is a matter of record that political opposition was discouraged." But Trumbull's report was filed the day after the Diem regime fell; few such reports were printed while Diem was in power.

When American journalists filed unfavorable reports, they were often threatened with expulsion by government officials. In *The Making of a Quagmire,* war correspondent David Halberstam explained:

> Since we all soon began to receive a variety of personal warnings from government agents, the threat of expulsion hung over all of us, and each man had to employ his own personal form of censorship. In this circumstance, the reporter draws his own line and then tries to walk it. This line is a combination of what he knows, of what he thinks the traffic will bear and of what he feels must be told.

By the spring of 1963, there were two principal movements in South Vietnam. One was led by Diem with the support of the United States, and the other was led by the Vietcong and the North Vietnamese against Diem. News stories described the rising discontent, which finally exploded in the summer of 1963 culminating in mass demonstrations against Diem. The unrest reached a climax in the dramatic suicide of a Buddhist monk, who dowsed himself with gasoline and then set himself on fire. It was an extreme act of protest that shocked reporters and the American public. David Halberstam, who witnessed the event, wrote, "I was too shocked to cry, too confused to take notes or ask questions, too bewildered to even think." The incident won a great deal of publicity for the movement against Diem. It was, in the words of Frances Fitzgerald, "an advertisement of the intolerable gap between morality and the reality of the Diem regime."

In November 1963, Diem's government was overthrown by a group of South Vietnamese army generals. The *New York Times* reported, "The only thing surprising about the military revolt in Saigon is that it has not come sooner." Reporters witnessed the rise and fall of seven different governments in South Vietnam during the following year. The number of news stories about Vietnam increased, but Americans were concerned primarily with trouble at home. Only three weeks after Diem was ousted, President Kennedy was assassinated in Dallas and Lyndon Johnson succeeded to the presidency.

President Johnson escalated American involvement in the war under the auspices of the vaguely worded Tonkin Gulf Resolution of 1964. The resolution, passed by Congress, authorized the president to take "all necessary measures" to "repel any armed attack" by the North Vietnamese who had fired upon U.S. ships in the Gulf of Tonkin. The North Vietnamese justified their action as defensive, saying the American ships had been participating in South Vietnamese forays along their shoreline. Johnson, however, described these attacks in a national broadcast as unprovoked, "open aggression on the high seas," and persuaded Congress to adopt another crucial provision that allowed him to "prevent further aggression." Without specific guidelines for instituting this policy, the resolution became a blank check for the president to wage war in Vietnam without a formal declaration from Congress. Johnson subsequently initiated regular bombing raids over North Vietnam and began a steady expansion of American troop levels. By 1967 the United States had more than 500,000 men in Southeast Asia, roughly half of its tactical air power and 30 percent of its naval strength. We were spending more than $2 billion per month on the war.

During this period the American press corps in Vietnam continued to grow. In mid-1964 there were roughly 20 American and other foreign correspondents in Saigon, not a particularly large number considering that more than 23,000 American "advisors" were there, that the Diem regime had recently fallen, and that Vietnam had been the most important issue in Johnson's election campaign against U.S. Senator Barry Goldwater. It was not until the next year, when the U.S. troop commitment expanded to 75,000, that there was a significant increase in the U.S. press corps in Vietnam. In

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late 1965 the number of media representatives grew to 131; by the end of 1967 that number had increased to 207, and by 1968 the number had grown to 634. (This large number is slightly misleading, since not all of the media representatives were reporters. In addition, a large number of correspondents were only on brief assignments. Thus the real "fact-finding" manpower in Vietnam was much smaller than the figures would indicate.)

Although the number of reporters increased, and with them the number of stories appearing back home, the breadth and depth of war information reaching the U.S. reader-viewer did not change significantly. In a massive study entitled "Big Story," Peter Braestrup explains that no American reporters spoke Vietnamese before 1968 and that few had a substantive knowledge of Vietnamese history and geography. Reporters were expected to compensate for these deficiencies through direct exposure to the war, but few spent even a year in Vietnam—hardly enough time to learn the language or to appreciate the complexities of the war from either a military or a political standpoint. To report "what the Vietnamese think" or to write about the progress of the war, journalists rarely went to the Vietnamese for information. Instead they relied on U.S. Embassy reports in Saigon. Lee Lescaze, a correspondent for the *Washington Post*, recalled the inadequacy of these reports, which were heavily biased in support of official American policy. He added, "In Saigon a reporter was at the mercy of the war establishment; the best way to get a proper perspective was to get out to the battlefield yourself."

year	number of articles on war in Vietnam	number of American troops in Vietnam
1960	7,000	0
1961	5,000	0
1962	7,000	0
1963	28,000	0
1964	49,000	23,000
1965	160,000	184,000
1966	206,000	385,000
1967	160,000	486,000
1968	123,000	536,000
1969	99,000	474,000
1970	44,000	334,000

Source: G. Ray Funkhauser, "Trends in Media Coverage of the Issues of the 60's," *Journalism Quarterly 50 (Fall 1973): 536.*

Television Brings the War Home

"Television speeded everything up. It was simple and it simplified. It was deeply dramatic and it reached a huge national audience; magazines like Time *and* Newsweek *had once been considered major outlets because they reached two or three million Americans; now the news shows were reaching a combined total of 60 million every night at roughly the same hour with roughly the same package. Television could do certain things powerfully, effectively and dramatically, and with total truth. And it could just as easily obscure the truth, and neglect serious difficult gray areas of public policy."*

David Halberstam
The Powers That Be

"War without television is an abstract affair, but war on the screen is a vivid experience literally brought home to millions of viewers."

Amnon Rubinstein
member of the Israeli Knesset
Washington Post, July 18, 1982

Television for the first time brought an ongoing war into American living rooms, where viewers witnessed the horror of combat firsthand. They saw "action" footage from the war between the usual clips of local news events and commercials. War became as familiar a staple to the television viewer as the weather report. As with all stories included in a daily television news format, Vietnam events were not covered in-depth, they were described in reports lasting only one to five minutes. With this time constraint, television reports usually offered combat footage and little else. Leonard Zeidenburg discussed the problem in the January 1968 issue of *Television* magazine:

> In providing combat scenes, the men in the field and their editors in New York are meeting what they regard as the demands of their medium and of their craft. They feel they can't overlook the fact that the end product of television is pictures—and that combat makes a compelling picture.

A film story on the evening news seldom runs more than 350 words. In comparison, a front page story in the *New York Times* often runs 1,000 words or more. Thus, distortions of war events were inherent in the television news format. Television correspondents reported their limited experiences, not in context, but as a microcosm of all news events in South Vietnam. The film often suggested that

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most of Vietnam was being destroyed, when in reality the viewer was seeing only the most spectacular highlights of a limited battle. Without in-depth analysis the audience could not possibly grasp the whole story. Television commentator Eric Sevareid pointed out that when television news showed Buddhists rioting in Saigon and Da Nang,

> The pictures could not show you that a block away from the Saigon riots the populace was shopping, chatting, sitting in restaurants in total normalcy. The riots involved a tiny minority in either city; yet the effect of the pictures in this country, including the Congress, was explosive. People thought that Vietnam was tearing itself apart, that civil war was raging. Nothing of the sort was happening.

A striking aspect of news coverage during the war was the extreme degree of concentration of the news-gathering process. Despite the number of reporters abroad, most reports in the American press were collected by only a few major newspapers, two weekly magazines, two wire services and the three national television networks. In terms of resident representatives of major news publications, news agencies and TV networks with national audiences, there were perhaps only 60 reporters in Saigon by 1968—far fewer than official figures indicated. Braestrup describes the breakdown as follows:

- Wire services: AP (servicing 1,262 U.S. newspapers, 3,221 radio and TV subscribers) had eight reporters and editors in Vietnam; UPI (1,200 newspapers, 3,200 broadcast clients) also had eight; Reuters (45 U.S. client newspapers), four; and Agence France Presse (AFP) (one U.S. subscriber, the *New York Times*), three.
- Radio-television networks: NBC (est. 15 million viewers and listeners to evening news) had six reporters; CBS (est. 15 million viewers), six; and ABC (est. 4.6 million), four.
- Newspapers: The *New York Times* (circ. 895,000 plus 320 news service clients) had four American reporters; and the *Washington Post* (circ. 480,000) and the *Los Angeles Times* (circ. 950,000), with 308 clients for their joint news service, had two reporters each.
- News magazines: *Time* (U.S. circ. 3.7 million) had six reporters; *Newsweek* (circ. 2 million), two staff reporters plus two persons on temporary assignments; and *U.S. News and World Report* (circ. 1.6 million), one reporter.

Editors and producers routinely make a number of crucial decisions in determining what is of greatest interest to viewers. Time and cost constraints are always important factors in the decision-making process, and their impact on coverage can be substantial. Elmer W. Lower, president of ABC News, explained in 1967:

> The daily package of war news from Vietnam averaged half a dozen film stories. If one of these is, say, a bold new terror raid, the correspondent knows that his producer is already stretching a four- or five-minute spot into the (news) show line up. The film flies to Tokyo for instant developing and editing. A satellite waits to bridge the Pacific.
>
> Other Vietnam footage, timely and perishable but less spectacular, flies a more routine route. In New York producers and assignment editors huddle over the correspondent's advisory cable...(and await) 150 feet of North Vietnamese air-raid scenes, competitive because all three networks have obtained prints, en route in a sack, on a jet due at 11:00 a.m. in Seattle.
>
> With a 5:30 p.m. air time, competition dictates a decision; the film will be screened and edited on the West Coast and fed electronically from there. Other footage may be unloaded in San Francisco, Chicago or Washington. Feature stories, independent of the clock and competitor, reach New York for more leisurely processing...more leisurely, and less expensive, too. A report from Vietnam, fed by satellite from Tokyo to New York, bears a $4,000 price tag. The North Vietnamese air raid, fed by a cable from Seattle, costs $3,000.
>
> In the days before coaxial-cable switches, before satellite feeds, a producer would personally evaluate every foot of exposed film—some 600 to 1,200 feet for the average story that may run three minutes, or 180 feet. We still look at everything that reaches New York, and at least 40 percent of the stories never see air.

In a typical television newscast, Vietnam footage received only limited air play. There were, as always, other stories that had to be covered; including the Cuban Missile Crisis; the invasion of Czechoslovakia by the Soviet Union; the assassinations of President John Kennedy, Robert Kennedy and Martin Luther King; the civil rights movement; student protests; and ghetto riots in most major cities. A number of domestic issues, such as the presidential elections, the debates in Congress about Vietnam policies and, perhaps most importantly, the grass-roots opposition to the war, were covered by the press as war-related stories and therefore competed directly with war coverage.

Anti-War Protests Begin

Large anti-war demonstrations were held throughout the country after President Johnson had made major troop commitments in 1965. Press coverage of the protests was scant at best and often highly unfavorable. Godfrey Hodgson, in his book *America in Our Times,* recalled:

> Newspapers and wire services consistently described any and all participants in peace demonstrations

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In one of the most dramatic of Vietnam War photographs seen by Americans, a 73-year-old Buddhist monk burns himself in a 1963 public suicide to protest what he called "persecution of Buddhists" by the South Vietnamese government. His suicide was one of many such demonstrations in Saigon at the time. Wide World Photos

> as "beatniks," "hippies," "peaceniks," and so on. When SANE, for example, held its overwhelmingly middle class, middle aged, middle-of-the-road march in Washington in November 1965, what appeared on TV news and in news photos were Viet Cong flags, interruptions by the American Nazi Party and the handful of marchers, out of several thousand, who were wearing beards and sandals.

Scores of demonstrations, culminating in a massive march on the Pentagon in the fall of 1967, were an indication of growing grass roots opposition to the war. There were other indications as well. By that time a number of influential members of Congress were openly opposed to American involvement in Vietnam. Senator William Fulbright, then chairman of the Senate Foreign Relations Committee, was one of the most outspoken critics. In a series of televised commitee hearings and a number of books on foreign relations, Fulbright argued:

> American interests are better served by supporting nationalism than by opposing communism.... When the two are encountered in close association, it is in our interest to accept a communist government rather than to undertake the cruel and all-impossible task of suppressing a genuinely national movement.

Television coverage of the congressional hearings gave respectability to opponents of the war, which coverage of the demonstrations had failed to do. For this and other reasons support for the war began to wane. Some top officials in the Pentagon, even Secretary of Defense Robert McNamara, were increasingly disillusioned with their own policies. U.S. Senator Eugene McCarthy announced that he would challenge Johnson for the Democratic presidential nomination as a "peace candidate"; he entered the New Hampshire primary and gained a suprisingly high 42 percent of the vote. U.S. Senator Robert Kennedy, who had previously indicated his reluctance to oppose the president, then announced his intention to run as well. Kennedy cited one particular event, the North Vietnamese "Tet Offensive" of 1968, as the main reason for his opposition to Johnson's re-election campaign.

Tet Offensive: A Propaganda Defeat for America

As a media event the Tet (New Years) offensive had clear impact on public opinion, turning Americans against involvement in Vietnam, even though militarily it marked a significant victory for the United States.

In military terms the Tet offensive was a coordinated surprise attack launched by the North Viet-

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namese and the Vietcong on nearly every city, town and major military base in South Vietnam. The offensive lasted nearly two months—from January to March 1968—and ended in a serious military setback for the aggressors. Don Oberdorfer, in his book *Tet!*, described the battle:

> Tens of thousands of the most dedicated and experienced (Vietcong) fighters emerged from the jungles and forests of the countryside only to meet a deadly rain of fire and steel within the cities. The Vietcong lost the best of a generation of resistence fighters and...communist claims to a moral and political authority in South Vietnam suffered a serious blow.

But Oberdorfer's account, written in August 1971, differed markedly from the initial coverage received by the American public in 1968, when the attack was reported as a major setback for the South Vietnamese and the United States.

NBC anchorman Frank McGee, in an hour-long special report entitled "Vietnam: A New Year...A New War," concluded:

> The cities are no longer secure; perhaps they never were. We don't know what happened (in the rural areas) because the rural areas are under communist control.... The (Saigon) government is weaker than ever, though it still exists. From all this, we must conclude that the grand objective—the building of a free nation—is not nearer, but further, from realization. In short, the war, as the administration has defined it, is being lost.

Indeed, in psychological terms the war was being lost. Before the surprise offensive American newspapers and television had given the Johnson Administration's claims about the progress of the war a great deal of play. The commitment of more than half a million troops had come under fire, but the administration claimed that the war was being won because of that commitment. The enemy suffered heavy casualties during Tet, but press reports erased the impression held by many Americans that the war could be won soon, if at all. Walter Cronkite reported in February: "It is becoming increasingly clear to this reporter that the only rational way out...will be to negotiate, not as victors, but as honorable people who lived up to their pledge to defend democracy and did the best they could."

Premature and inaccurate interpretations such as these heightened already existing anti-war pressures. Public support for the war began to collapse. Polls indicated that before Tet a majority of the American people had supported the war; now, almost suddenly, a majority opposed it. By the end of March, public opinion was solidly against President Johnson, and though he felt Tet had been a military victory for the United States, he knew he could no longer pursue his policy of escalation without severe political repercussions. Johnson rejected a request from his generals to add 206,000 more men to the half-million already in Vietnam. On March 31 he announced that he would not seek re-election and that he would call for a partial halt to bombing raids over North Vietnam.

Johnson's decision not to seek re-election marked a watershed in the war. The fighting was far from over, however. Richard Nixon was elected to the presidency at the end of 1968, having promised "peace with honor" for the United States in Vietnam. But how this was to be achieved was unclear, since the Nixon peace with honor proposal seemed to concede that the war could not be won while implying that the prospect of losing the war was unacceptable.

"Vietnamization"

To reassure the public that he intended to end the war, Nixon removed U.S. troops from major combat zones. Their mission was shifted from search-and-destroy to guarding urban areas under government control. The administration also began a series of phased limited withdrawals of American combat troops from Vietnam. In addition, Nixon introduced a "Vietnamization" program, designed to guard

Did the Press Act Responsibly in Its Coverage of Tet?

Peter Braestrup: The observations of Oberdorfer and other writers differ markedly from most of the media's 1968 "message." That message, most simply put, was: Disaster in Vietnam! The generalized effect of the news media's contemporary coverage of Tet in February-March 1968 was a distortion of reality—through sins of omission and commission—on a scale that helped shape Tet's political repercussions in Washington and the administration's response.

Lee Lescaze: Press coverage of Tet was basically competent. There is no question that there were inaccurate reports, but the contention that if the press had not covered Tet as a disaster, and not pointed out the failure of American strategy, we would have sent in more troops and won the war is insulting and absurd. The administration at home and the war establishment in Vietnam had been claiming that the search-and-destroy missions were effectively dismantling the enemy. Tet proved that this was untrue, that the public had been misled. It was the responsibility of the press to convey this to the American public and it did.

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against South Vietnamese defeat while the United States was withdrawing. In this program South Vietnamese forces were expanded to more than one million men—eventually more than half the adult male population would be mobilized—and they were outfitted with enormous quantities of the most sophisticated military equipment.

To reinforce Vietnamization, Nixon reinstituted bombing raids over Indochina. The United States targeted enemy-held areas of South Vietnam and initiated secret bombing missions over Laos and Cambodia to disrupt enemy supply lines. In time, the bombing of North Vietnam was resumed as well. From January 1969 to March 1971, the United States dropped more than two-and-one-half million tons of bombs on Indochina, more than the Johnson Administration had dropped between 1965 and 1968. The American press did not bring this news home as it had in the past, however. Although some of the most important investigative reporting of the whole war period came after 1970, the number of reports on the war dropped dramatically.

Press reports after the Tet "defeat" were more critical of American involvement, but the American public saw fewer war stories. Now the big news as far as the news industry was concerned was the American troop withdrawal.

In 1969 the executive producer of the *ABC Evening News* wrote to his correspondents, "I have asked our Vietnam staff to alter the focus of their coverage from combat pieces to interpretive ones pegged to the eventual pullout of American forces. This point must be stressed for all levels." In a message to his Saigon bureau, he explained the kind of footage this new policy was expected to produce, "I think the time has come to shift some of our focus from the battlefield...to themes and stories under the general heading: We are on our way out of Vietnam." But, Godfrey Hodgson points out: "When the television networks decided that the time had come to shift attention from the battlefield, some of the heaviest fighting and the heaviest U.S. bombing of the war were still in the future. By the spring of 1969, the war was over, because you didn't see it on the tube anymore. And the reason why you didn't see it on the tube was because certain television executives had decided...that it wasn't the story anymore."

Although the press was focusing on the supposed winding down of the war, American involvement wasn't ending; it was only being transformed. During Nixon's first term in office, 3.2 million tons of bombs were dropped on Indochina; 20,000 Americans died and another 110,000 were wounded; 340,000 Asians died; some 600,000 civilians became casualties; and four million people became refugees. Senator Fulbright said, "The Nixon Administration has pointed with pride to the troop withdrawals at this time, and justified the massive bombings as a necessary step toward gaining victory against North Vietnam even as we withdraw our troops. But this represents an escalation, not an end, to the war."

Controversy raged in America after U.S. troops, under Nixon's orders, invaded Cambodia "to clean out communist camps." Cambodians—and the American viewing public—watched as American and North Vietnamese armies fought each other in this supposedly "neutral" country. By 1971 the North Vietnamese controlled half the country, and the American troop initiative had proved a failure. The Vietnamization program faltered, too, despite the massive bombing raids. The press reported these events in dramatic terms. Pictures of smoldering villages that American strategists claimed had been "saved" from communism appeared in the papers, while television reports showed South Vietnamese troops clutching desperately to retreating U.S. helicopters in order to escape communist gunfire.

My Lai

The story that brought home the true horror of the Vietnam War to Americans was the post-mortem report on the My Lai massacre. On a routine search-and-destroy mission during the Tet offensive, a company of American troops walked into that South Vietnamese village and killed 347 civilians, most of them women and children. The story did not reach the American public until 1970, when Army Lieutenant William Calley, leader of the company, and four other soldiers were court-martialed for their involvement. This episode brought home the terror of the war in Vietnam. A photographer had pictures of screaming women, dead babies and a mass of bodies piled up in a ditch outside the village. As one congressman wrote, "What obviously happened in My Lai was wrong. In fact it was so wrong and so foreign to the normal character and actions of our military forces as to immediately raise a question as to the legal insanity at the time of those men involved."

The political and legal issues raised by these press reports were never fully resolved in the minds of the American public. Admittedly, what occurred at My Lai was terrible, but weren't the military personnel performing their assigned duties as American soldiers? More than fourteen thousand other civilians had been killed during the Tet offensive—why were these soldiers more guilty than thousands of others? There were no easy answers.

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From Bombs To Peace

Then, in 1972, the war took a dramatic turn. The North Vietnamese launched a massive attack, known as the Easter Offensive, that at first achieved great success against the South Vietnamese Army. Viewing it as a grave danger to "peace with honor," Nixon authorized some of the heaviest bombing raids of North Vietnam yet undertaken, producing a bloody stalemate, which encouraged both sides to seek a final settlement in the negotiations that had been in progress since 1968. In October, just before the 1972 presidential election, chief negotiator Henry Kissinger announced, "Peace is at hand." The announcement won favorable press coverage for the Nixon Administration and helped him crush Democratic Senator George McGovern, winning by the largest electoral vote margin in history.

But Kissinger's prediction proved to be premature. The peace negotiations broke down again when the South Vietnamese refused to accept the terms tentatively agreed upon by the United States and North Vietnam. After his election, Nixon authorized still more air raids and the "Christmas bombing" of North Vietnam. *Time* magazine summed up the situation at home and in Vietnam:

> The contrast was surreal. After a weekend of pre-Christmas festivities at the White House, Richard Nixon flew to the Florida sunshine, Henry Kissinger in tow, with not a word to the country or the world about Vietnam. But the president's message to the enemy was as unmistakable as it was brutal. First he ordered a new seeding of Vietnam harbors with mines. Then he launched the biggest, bloodiest air strikes ever aimed at the North. Nixon seemed determined to bomb Hanoi into a settlement that he is willing to accept.

Thomas Hughes in the *Atlantic Monthly* described Nixon's decision in more dramatic terms:

> Nixon did not care if the whole world thought he was crazy for resuming the bombings, for the Russians and the Chinese might think that they were dealing with a madman and so better force North Vietnam into a settlement before the world was consumed by a larger war.
>
> Negotiations resumed in early 1973, and a cease-fire agreement was signed in January. The settlement barely met Nixon's minimum standards of "peace with honor," but the final withdrawal of troops allowed America to leave behind its longest war. The American press covered the final withdrawal and the last days of American presence in Vietnam; but the issue over which the war had been fought, the political future of Vietnam, was practically forgotten.

The United States continued to furnish South Vietnam with substantial economic and military aid until 1975, when the communists swept through South Vietnam and stormed Saigon as television cameras filmed the action, and few Americans seemed very concerned with the fate of the beleaguered Asian country. Just as news coverage had given rise to public concern about American intervention in Southeast Asian affairs, lack of news coverage caused public interest to decline, even while the war was still in progress. David Halberstam observed that the war "was over in people's minds while it was still unfinished upon the battlefield."

Two Wars

The war as presented to the American public in the press was often quite different from the war that actually took place. The press war started later and ended earlier. American policy in Vietnam was established many years prior to the first significant press reports on the struggle in Indochina. Initial reports were generally uninformative and encouraged public complacency, if not outright approval of American policy. Columnist James Reston observed:

> The mass communications of this country probably have more effect on the American mind than all the schools and universities combined, and the problem is that neither the officials who run the government, nor the officials who run the newspapers, nor the radio and television news programs, have adjusted to that fact.... We are pretty good at reporting "happenings," particularly if they are dramatic; we are fascinated by the events, but not by the things that cause the events. We will send 500 correspondents to Vietnam after the war breaks out and fill the front pages with their reports, but we will not send five reporters there when the danger of war is developing; and even if we do, their reports of the danger will be minimized, by editors and officials alike, as "speculation" and hidden among the brassiere ads, if they are not hung on the spike.

When media coverage intensified and the brutal reality of war was exposed on the television screen, the press encouraged Americans to re-evaluate their support for the war. Says Reston,

> The reports of the press and radio and television are now being blamed for the defeat of American power and policy in Indochina, which is another way of challenging the whole idea of democracy. For in the long history of the war, the reporters have been more honest with the American people than the officials.... Maybe the historians will agree that the reports and the cameras were decisive in the end. They brought the issue of the war to the people...and forced the withdrawal of American power from Vietnam.
>
> *New York Times*
> April 29, 1975

Reston's comments reveal an important contradiction in the media's role in Vietnam. The war that killed at least 1.5 million Indochinese and 57,000 Americans, that turned more than a third of the Viet-

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namese population into refugees and ultimately cost the United States between $350 and $676 billion, was at first supported by the press. It was much later, after more than a decade of American intervention, that the media spoke out against the war.

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7. The Electoral Process

"Let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a president and senators and congressmen and government officials, but the voters of this country."

—Franklin D. Roosevelt

"For democracy to grow it must have citizens, a people who take interest in public affairs."

—Alexis de Tocqueville

In this chapter, *Perspectives* examines the political process in the United States, and how citizens can take part in it. Only when citizens play an active and informed role in government can it be as our Founding Fathers intended—"by, of and for the people."

There are many ways in which Americans can participate in the political process. Voting is the most important and most basic form of political participation. It is through the ballot box that the people can assert control over their government. Beyond voting, citizens participate in government by communicating with elected officials, whether directly or through the media or lobbying groups. Writing letters to representatives and senators, newspapers and magazines, taking part in party politics and election campaigns and expressing one's views through special interest groups are all ways in which the average citizen can affect policymaking.

This chapter examines several aspects of our political process—campaigns, elections, parties, political labels and special interest groups. As you read the articles, try to discover what role you can play in our government. What might you do to increase your level of participation? How can you make a difference?

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Case Study: The Electoral Process
The 1980 Presidential Election
Was it Ronald Reagan who beat Jimmy Carter, or was it someone else?

Words to Know

apportionment
bipartisan
coalition
conservative
convention
election
Electoral College
incumbent
left wing
liberal
moderate
party
platform
plurality
political action committee (PAC)
primary election
radical
reactionary
right wing
special interest

On the Campaign Trail

Donald Riegle

Senator Riegle (D-Mich.) was elected to the Senate in 1976 after serving as a representative for 10 years. This article, written in diary form, gives an inside look at Senator Riegle's battle for his party's nomination. Senator Riegle is also the author of a book, O Congress, *an account of the life and work of a U.S. representative.*

The alarm clock rings early this morning. It's 5:30 a.m., and Michigan Democrats will go to the polls in just two weeks. One year ago, I decided to put my 10-year career in the U.S. House of Representatives on the line by seeking the Democratic nomination for the U.S. Senate seat of retiring Senator Phil Hart. The pace has been frantic. Putting together a staff and an organization capable of reaching the more than 700,000 voters likely to cast ballots in the Democratic primary was difficult. Raising the necessary money to carry our message across 19 congressional districts, from Detroit to Marquette, continues to be a humbling experience.

The cause seems important to me, and I feel the outcome is vital to the future of Michigan. However, even with four candidates in both the Republican and Democratic primaries, the press has for its part largely ignored the race until just recently. Too often it has focused on opinion poll results and apparent scandals. Far too little attention has been given to the candidates' stance on the issues, plans for the future and past records of accomplishments.

Fortunately, after months of 16- and 18-hour days, seven days a week, I have built a base of volunteers and supporters. They have had a multiplier effect on my own campaigning. They continue to deliver campaign literature. They even help with my name identification by "freeway flashing" (holding signs—bearing my name and the fact that I'm a Democrat running for the U.S. Senate– over freeways to catch the eyes of motorists traveling home or going north for the weekend).

Nevertheless, the newspaper polls show me trailing, 44 percent for the leader to my 17 percent. The other candidates only received 13 percent and 1 percent. My instincts tell me not to believe those numbers, and our own poll figures show me dead even with a crucial and unusually large 25 percent of the electorate undecided. These undecideds hold the balance of power, and that is why I must go flat out these last two weeks. I must cut down on sleep, if possible. I must be prepared for the careful press scrutiny just now coming to the race, and for which I pleaded for so long. Most important, I must keep my workers and staff going full steam. It is they who could make the difference. If we miscalculate, or if we don't identify our voters, or if we then fail to put forth the effort to get them to the polls, we will have lost one of our crucial advantages over the opposition—our grassroots organization.

No Sleep 'til It's Over

So as I shower and shave and throw on my suit, I realize that my exhaustion cannot last much longer. That is one curious fact about an election—you rest when it is over. Unlike a business, you cannot make up your losses during the next quarter. There is no consolation prize. Sure I'm young, and perhaps I could run again, but none of us can predict the future. The competition might be even tougher the next time. And if I win, well, then I become the nominee and there is another election in just three short months. However, as the nominee of my party things will be much different.

Michigan will be a target state for both presidential candidates. That means there will be national efforts to bring the voters to the polls in November. Certainly the strength of the presidential candidates' campaigns will impact on the Senate nominees. Many losing candidates have asserted that they would have been the victors if only the presidential candidate had run stronger or if they were running in a non-presidential election year.

But, it's July 1976, and Jimmy Carter and Walter Mondale will probably face Gerald Ford and whomever he picks as his running mate. Since Michigan is the president's home state, the Republican senatorial nominee will definitely have an advantage. For that reason, I am pleased that our campaign has taken on a rather independent image. That is the way I am, and I think that is one of the great strengths we will have during the last two weeks. Most of my supporters have not been long-time Democratic party workers. They

"The idea that you can merchandise candidates for high office like breakfast cereals—that you can gather votes like box tops—is, I think, the ultimate indignity to the democratic process."

Adlai Stevenson

have been attracted to our effort for many reasons, but they are intensely loyal and hard-working. I hope that their strong convictions and dedication allow them to overcome the fatigue that I am feeling, and that I am sure they must be experiencing.

A quick cup of coffee and off to the suburban Detroit plant gate to greet auto workers as they head to work. You've got to greet them at the beginning of the day, because after a long summer day in the factory, not too many working people want to take time to chat as they leave work. They particularly don't want to chat with politicians. It's sad, but it's true.

In the closing weeks of the campaign, the candidate must maximize his time and go to the areas where he is likely to find Democratic primary voters. After figuring out where these voters are geographically, we have to determine which voters are firmly in my camp and which are solidly behind my opponents. With the race neck and neck, we need to isolate the undecided voters and appeal to them. Nevertheless, it's an improvement over my position earlier this year, trailing by such a significant margin that I had to change votes as well as convince the undecided voters to join our cause.

Using the Media for Best Results

In addition to the active organization that is crucial, I had to have an aggressive media campaign. There are just too many potential voters to even hope to reach them all by door-to-door campaigning, literature distribution, telephoning, "freeway flashing" and the like.

You have to be on TV and radio. You have to be on often enough and at the right times to reach your audience, and your advertisements must project an appealing image. The logistics behind an effective TV campaign program are complex. A great deal has to do with what they call "production," "timebuying," "market," "target audience," etc. But all of this hinges on the campaign's ability to buy the time and talent needed to wage a competitive TV campaign.

Raising money has turned out to be my most crucial obstacle to winning the election. I know how to campaign. I know how to motivate people. I can capture a majority of almost any audience I address. But I can never hope to address enough groups to earn the votes needed in this primary. So, I spend at least one-third of my time meeting privately with one person or in small groups and occasionally with larger groups to secure the contributions necessary to produce and place the all-important TV ads on the air.

We are living hand to mouth. It is now common for me to raise the money in the morning necessary to pay for an ad that will run in the evening. Even though we are more successful than our opponents at raising money, we must now cut back on literature and other resources for the field staff. I am troubled by this and plan to contribute some of my own limited personal funds to see that one last printing of leaflets is ready for distribution the final weekend before the election. It appears that there is no way we can avoid going into debt. We must win! How else can we pay our debts?

So, off I go. A quick glance at the schedule, which reads like a script for an endurance contest: plant gates, a fund-raising breakfast, a press conference, a speech before a group of United Auto Workers retirees, a fund-raising luncheon, followed by some campaigning in a shopping center and a quick trip to the airport for a flight to another media market and another press conference. A change of clothes and a shower—if I am on time—before going to a cocktail party fund-raiser and dinner. Then I'll have to leave to go to a candidates' debate before an important labor group. Finally, I am slated to appear live on a local radio call-in program. I hope I'm still awake by then!

The Changing Primary System

You have just read an article on the primary system. In recent years the primary system of nominating candidates has been expanded. The reason for doing so is to increase citizen participation. As the article points out, there are costs and benefits to expanding the primary system. This activity is designed to help you assess the effects of the changes.

1. What is the primary system for nominating candidates and how does it work?

2. What are the reasons for the expansion of the primary system?

3. What are the benefits in the expansion of the primary system?

4. What are the costs in the expansion of the primary system?

5. In your opinion, do the benefits outweight the costs? Why or why not?

6. What recommendations do you have for increasing the benefits and decreasing the costs?

PAC's: Too Much Special Interest Influence

Dan Glickman

During the 1982 campaign season more than 3,100 political action committees (PAC's), representing a variety of interests from horse lovers to textile manufacturers, contributed over $80 million to House and Senate candidates. Another $160 million was spent by PAC's on local races, independent political advertising and administrative activities. Below, Representative Dan Glickman (D-Kan.), argues that PAC's distort the democratic process by making candidates beholden to their narrow interests.

Almost everyone knows that PAC-MAN is an electronic video game that gobbles up quarters so little round creatures with enormous mouths can be maneuvered to gobble up little dots. It has become a national craze and a multimillion dollar business. There's another PAC game going on that also involves millions of dollars. Its sole objective is to gobble up congressional influence.

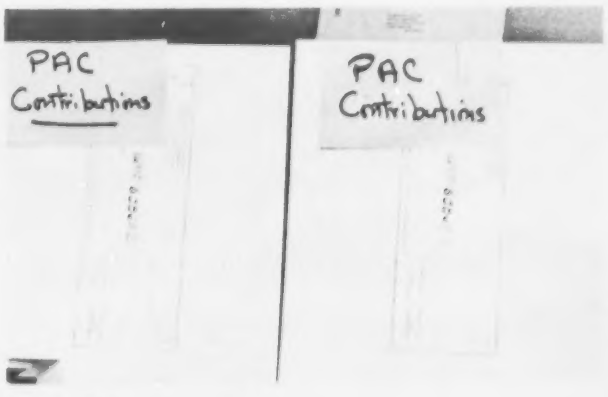
Political action committees, or PAC's, originated with the 1971 Federal Election Campaign Act. That act was adopted with the laudable goal of cleaning up campaign practices wherein a well-heeled individual contributor could quite literally buy an ambassadorship or another high-ranking government position. The 1971 legislation put limits on individual contributions and gave birth to "multicandidate political committees"; hence, PAC's and a new campaign finance problem came into being.

It is naive to think that the PAC's of the AFL-CIO or the chamber of commerce, of Right to Life or the National Abortion Rights League—political action committees on the right and on the left—are spending incredible amounts of money out of simple altruism. These PAC's contribute to campaigns for one reason only, and that is to influence politicians to support their special interest goals. In and of themselves these PAC's are not objectionable, but their growing dominance over the American political system is crowding out other participants in the process and destroying the role individual Americans and political parties play in our democracy. Since these wealthy PAC's represent such specialized interests—from boilermakers to silver dealers and from Exxon executives to Burger King owners—too often their narrow interests take precedence over the public interest. The whole is supposed to be the sum of its parts. Unfortunately, in the world of politics and PAC's, this isn't the case. It is impossible to add up all the special interest parts and arrive at the common good. Instead what results is a splintering of consensus and politics with each having different goals.

It happens this way. The PAC's subtly "buy" access to the halls of Congress. Although they don't very often blatantly claim that their campaign contributions entitle them to the vote of a member of Congress, they do know and take advantage of the fact that access and big contributions can sway votes. More and more, lobbyists are losing their shyness about tying the two together. It has become commonplace for discussions to include blatant reminders of PAC contributions. The average citizen has neither the time nor the financial resources to follow-up on his or her contributions as thoroughly or effectively as PAC's do. Therefore PAC contributions tied to special interest views obscure the views of hundreds of thousands of constituents without PAC support whom each member of Congress was elected to represent.

In the past eight years more and more PAC's have set out to buy access with large contributions. In 1974, the second congressional election year after the changes in the election laws, some 600 PAC's ranging from marine engineers to California doctors put $12.5 million into congressional campaigns. By the 1980 elections, nearly 3,000 PAC's had put $55 million into campaign chests. In the 1982 congressional elections PAC contributions amounted to over $80 million.

Not only do PAC's buy influence and access, but their growing dominance has further reduced the dwindling influence by the political parties. Parties have traditionally served to build a consensus to govern the country. One reason they are in trouble is that the vast influx of PAC money has eroded their role in campaign finance. In 1974, House candidates relied on their parties for 17 percent of their campaign dollars; by 1978



that dependence had dropped to 4.5 percent.

With the cost of campaigning for a House seat up 180 percent since 1974, and with fewer individual contributions and party dollars available, most candidates have felt that saying "no" to PAC contributions unilaterally was akin to political suicide. Although some have placed limitations on PAC contributions, ranging from accepting sums far below the $10,000 the law allows to limiting contributions from PAC's within their own states or districts, there is little hope that congressional candidates will universally resolve the undue influence of PAC's through self-imposed restrictions.

Something clearly must be done, however. Proposed campaign finance reform legislation aimed at curtailing PAC influence has more than 50 cosponsors from both parties in the House. The bill would put a ceiling on the total amount a congressional candidate could take from PAC's in general; it would encourage increased individual contributions by raising the $1,000 limit for each election to $2,500; and it would double the tax incentives for political contributions to candidates. By limiting the amount of aggregate PAC money a candidate can accept and by encouraging other sources of contributions, the bill should restore some balance to campaign finance and to the political process.

Many parents have become so concerned about the PAC-MAN fever that has hit their children that several jurisdictions have imposed restrictions on video arcades. The adult-version, PAC fever, needs some restrictions as well. Two hundred years ago Alexander Hamilton said, "Here...the people govern." It would be a sad assessment if in the future it was observed that "Here special interests override the principle of representative government."

You and a Political Campaign

There are many ways people participate in political campaigns. Voting, volunteering time and money, trying to convince others of a particular point of view and/or actually running for office are examples. Political participation can be divided into four basic types. They are:

A. Observer — becoming aware of the candidates, the issues and the candidates' stands on the issues.

B. Supporter — working on behalf of the candidate(s) of one's choice.

C. Advocate — stating a position and presenting reasons to try to convince others.

D. Organizer — planning, managing and leading activities. Making sure decisions are made and that the decisions are then carried out.

1. Read the following examples of participation in a political campaign. Label each example as to the type of participation it demonstrates.

_____"I helped out in the campaign office running the ditto machines, answering phone calls, licking stamps, whatever needed to be done. It was really exciting being part of politics."

_____"We had a list of all the voters. We called them on the phone and talked to them about the campaign and the views of our candidate."

_____"One day my sister and I went to hear the candidates debate the issues. We took paper with us so we could write down what each candidate said on each issue. Afterwards, we talked with others to get their impressions. I don't know who I'm going to support yet but I'm beginning to understand the differences between the two candidates."

_____"In this last campaign I helped plan the candidate's speaking schedule. I had to decide where and when the candidate would make public appearances. One of the most interesting things I did was to advise the candidate about the issues each candidate would be most interested in."

2. Now think of ways you have or could participate in a campaign. It could be an election in your school, local community, your state or national campaign. What types of participants or roles have you identified? For example, what have you done or could do to participate as an advocate?

3. What could you do to encourage others to participate?

PAC's Contribute to the Political Process

Don V. Cogman

Not everyone thinks the PAC-men are evil. Supporters argue that PACs are merely coalitions of people who share the same interests and pool their money rather than making smaller, more anonymous donations. Below, Don V. Cogman, past president of the National Association of Business Political Action Committees, explains why PACs are an important new institution in American politics. Cogman is also vice president for government affairs for MAPCO, a Tulsa-based energy company.

What is the real issue in the growing debate on whether or not to limit political action committee contributions to federal candidates?

Is it the decline in political parties? Nonsense—The only reason for a decline in party giving is that Congress has put a limit on what they can contribute to federal candidates.

Is it the advantages it gives to incumbents? Certainly not—incumbents are not given an advantage by PAC giving; the trend is clearly to helping challengers and open-seat candidates.

Is it that corporate America is gaining an overwhelming influence in the Congress of the United States by contributing millions of dollars to federal candidates? Absolutely untrue—no corporate money whatsoever is given to federal candidates. Additionally, in a recent nationwide survey of over 250 corporate employee PAC's, representing over 100,000 individuals, of those PAC's surveyed, the average contribution to a House candidate was $471.00. The average contribution to a U.S. Senate candidate was $824.00.

The real issue is competition, and the fact that employees of business are developing a greater involvement in the political process. Where was this righteous indignation when organized labor was alone in influencing the Congress? The employees of business have just as much right to participate as others.

Prior to 1976, employees of business had very little opportunity to organize their participation in the political process. However, due to election law reforms in the early seventies, we now have the opportunity to freely and voluntarily participate in the political process—a participation opportunity that organized labor has enjoyed for decades.

The corporate employee PAC can be—indeed, already is—a tool to increase participation in our political system. Another portion of the recent national survey dealt with individual corporate employees, and their reaction to the PAC movement. Of those surveyed 36 percent indicated their participation in their company's PAC had increased their interest and involvement in the political process. Nearly 75 percent believe that corporations should provide employees with more political information and training, and an equal 75 percent believe business employees should be more involved than they are today in the political process.

In addition to these facts, I also think it is important to focus on the general subject of "special interests" and the role they play in a free society.

In his book *A Nation of Associations,* Alfred Balitzer has said, "The term 'special interest' has received less attention as to its definition and meaning, and is used more recklessly than almost any other term frequently heard in society today. In the print and broadcast media, in respectable journals, even in scholarly textbooks, special interests are spoken of as if they are the invisible hand of our political life and the principle source of political corruption."

Many of the adversaries of special interets manifest a "good guy—bad guy" mentality, a mentality that frequently tends to reflect hostility to the system of business enterprise. Their arguments silently pit the profit motive against the public interest, leaving the impression that those who associate with free enterprise and the private sector should not, as a result of their association, possess the same "right to influence" as others whose avowed dedication is to the public sector. This is a disservice to the truth, and significantly hinders an open and intelligent public discussion of a vital area of public policy and democratic principle."

The fact that business is becoming more involved in the political process is a critical component in maintaining parity in the political marketplace. The employees of business have just as much right to participate as others. We have an equal stake in who will run our country. Any legislation that further hinders that right to participate is counter-productive to what the democratic system of government is all about.

Alfred Balitzer also said, "The hostile attitude of some toward PAC's traces to their political dislike of competition. As vigorous participants in the political system, PAC's represent a competitive force, one to which policy makers must accommodate and with which they must reckon. Indeed the case for the PAC rests in part on its capacity to bring new pressures to bear on the policy process, to interest more citizens

in campaigns and issues, and to force officials better to frame and defend their policies."

Competition is what makes our democratic system survive. Organizing, competing, involvement by individuals of every shape and form—yes, even those who work for business and give of their own hard-earned time and money—this is what makes our political system work.

All citizens should urge the members of Congress to continue to expand the opportunities for participation in our system of government, and reject the efforts of those who would restrict the rights of individuals or groups to make their views known.

Voting in America

Look at *Table 1*. It presents the percentage of voting-age Americans who have voted in national elections since 1948. Using this table answer the following questions.

1. How does the percentage of voting-age Americans who vote in presidential election years compare with those who vote in "off" year elections?

2. Who do you think accounts for the difference?

3. In 1980, 51.8 percent of voting-age Americans voted in the presidential election. Why do you think more people do not vote?

4. What suggestions do you have that would encourage more people to vote?

Percentage of Americans Who Vote

(Percent of Voting Age Population)

	Presidential Elections	House of Representatives[1]	House of Representatives[2]
1980	51.8	45.4	35.1
1978	—	—	35.2
1976	54.3	49.6	—
1974	—	—	36.2
1972	55.5	51.0	—
1970	—	—	43.5
1968	60.9	55.1	—
1966	—	—	45.4
1964	61.9	57.8	—
1962	—	—	45.4
1960	62.8	58.5	—
1958	—	—	43.0
1956	59.3	55.9	—
1954	—	—	41.7
1952	61.6	57.6	—
1950	—	—	41.1
1948	51.1	48.1	—

1: Center column includes House of Representatives elections in the same year as presidential elections.
2: Last column is House elections in "off" years.

Source: U.S. Bureau of the Census, *Statistical Abstract of the United States*

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Capsule History of Political Parties in the United States

1791-1824
Formation of First Political Parties

Major Parties:
Federalist (Hamiltonian)
Democratic-Republican (Jeffersonian)

There is no mention of political parties in the Constitution, nor was it anticipated that they would be created. However, very shortly after the ratification of the Constitution and the convening of a government under it, parties began to form.

The first political parties were organized in Congress around the leadership of Alexander Hamiltion and Thomas Jefferson. Their purpose was to press for legislation favored by their members. Hamilton's Federalists advocated a strong central government and favored rapid commercial and industrial development. Jefferson's Democratic-Republicans endeavored to protect states'rights and to preserve the agrarian society of the young nation. By 1793 all representatives and senators were affiliated with one or the other party.

Almost immediately the role of parties expanded beyond affecting legislation to support for the election of favored candidates. With the resignation of George Washington in 1796, the newly formed parties began to compete for the presidency.

1824-1850
Rapid Growth of the Electorate and the Democratic Party

Major Parties
Democratic
Whig

By 1816, the two original parties had lost much of their support. The Jeffersonian party was renamed and transformed into the Democratic party; the Hamiltonians were succeeded first by the National Republicans, and then in 1836 by the Whigs. Andrew Jackson was the leader of the Democratic party and the key figure of this period. One way Jackson strengthened the role of political parties was through institution of the "spoils system." party followers were rewarded with jobs and other favors. Jackson's appeal to the common man also helped bring more people into the political process. In 1824, only 350,000 people voted in the presidential election. By 1848, almost 3,000,000 people cast ballots. The major beneficiary was Jackson's Democratic party, which controlled the presidency for 12 consecutive years. The Whigs were led by Henry Clay, Daniel Webster and John C. Calhoun. The party was essentially an anti-Jackson coalition of northern businessmen and supporters of states' rights and slavery from the South.

1850-1880
Civil War, Reconstruction and the Supremacy of the Republican Party

Major Parties
Republican
Democratic

The history of the political parties in this period reflect the history of the nation. The issue of slavery split the Democratic party and led to its decline. In 1860, there were two Democratic presidential candidates—one from the North and one from the South. Meanwhile anti-slavery forces joined together to form the Republican party. Beginning with the election of Abraham Lincoln in 1860, the Republicans controlled the presidency for 24 consecutive years. The bitterness of Reconstruction (1868-76), imposed by a Republican administration, led to domination of the South by the Democratic party. Toward the end of this period, the Republican party moved away from its radical origins to become the party of business and industry.
industry.

1880-1929
Popular Unrest, Reform and Third Parties

Major Parties
Republican
Democratic
Populist
Progressive

The last quarter of the 19th centry was a period of rapid industrialization and disruption of traditional ways of life. Social and economic conflicts led to major political battles of at all levels of government. One result was the growth of numerous "third parties." The Prohibition party of the 1870s sought to outlaw the sale and production of liquor; the Greenback party of the same time opposed the gold standard. The Socialist Labor party reflected the interests of industrial workers and advocated a socialist economic system.

The two most important third parties was the Populist, or People's party, and the Progressive party. The Populists represented the views of farmers, pioneer settlers and other groups whose interests were threatened

by the growing power of industrialists and railroads. The election of 1896 marked the beginning of the end for the Populists. William Jennings Bryan, a Populist hero, was nominated for president by the Democratic party. At first this appeared to be a victory for the Populists, but it also led to their decline, as the Democratic party absorbed many of their positions and supporters. The Progressive party fought for reform of the political process and increased regulation of business by government. While they never won the presidency, they did win victories on such issues as direct election of senators, creation of the Food and Drug Administration and the first income tax.

1929-1968
The New Deal Coalition

Major Parties
Democratic
Republican

Following the progressive reforms of the previous decades and World War I, the United States pursued isolationism in foreign policy and promotion of business at home. This "era of normalacy" was brought to an abrupt end by the economic crash of 1929. Democrat Franklin D. Roosevelt won an overwhelming victory in 1932. His "New Deal" policies became the basis for a coalition of labor, urban poor, immigrants, blacks and other groups under the banner of the Democratic party. The Democrats controlled the presidency for 28 of the next 36 years, and Congress for 34 of those years.

1968-1983
Parties Today

Major Parties
Democratic
Republican

The election of Republican Richard Nixon in 1968 brought an end to the Democrats' eight-year rule of the White House. The Democrats, who in the 1960's had demonstrated a high degree of party unity, began to suffer intra-party division over the Vietnam War and other economic and social issues. In 1972, President Nixon was easily reelected when the Democratic candidate, George McGovern, was considered too radical by many traditional party members. The effects of the Watergate scandal (1973-74) began to be felt shortly thereafter, however, as President Nixon was forced to resign, and the image of the Republican party was severely tainted. This trend continued through the 1976 presidential elections as Democrat Jimmy Carter narrowly defeated Nixon's replacement, Gerald Ford. Watergate appeared to be all but forgotten by 1980, however, when the Republican party not only regained the presidency, but also won control of the Senate for the first time since 1952.

An important result of the political shift of the 1970's is that both parties have lost many of their traditional supporters and that more people are identifying themselves as "independents." Third party candidates rar for the presidency in 1968, 1972 and again in 1980. As we move further into the 1980's many questions arise concerning the future of our party system. Will there be another realignment like the ones in the past? Will the two-party system splinter into a multi-party system like those on Europe? Or, as more people declare themselves independent, will parties cease to play an important role in our political process?

Political Parties Through History

This activity will help you understand why political parties were formed and how they have changed through history. Answer these questions on your own paper.

1. According to the article, why were political parties formed? What purposes did they serve throughout history?

2. Pick any national election year in U.S. history. Using U.S. history textbooks or sources from a library, identify the political parties existing at the time.

3. What were the names of the political parties?

4. What did each of the political parties stand for?

5. What people were likely to be members and support each political party's philosophy?

6. What kinds of activities did people engage in to support political parties and candidates running for public office?

7. How are these activities similar to and different from those engaged in today?

The Role of the Media in the Electoral Process

An Interview with Haynes Johnson

Haynes Johnson has spent most of his 26 years in journalism writing about politics and national affairs. In 1966 he won the Pulitzer Prize for national reporting and he has published several books on American politics, including Fall of a President, *about the decline of the Nixon administration, and* Lyndon, *a portrait of President Lyndon Johnson. Since 1969 he has been a columnist on the national staff of the* Washington Post. *Below he talks to CLOSE UP about how the media covers electoral politics.*

CLOSE UP: Having covered many presidential elections, how would you describe the role played by the media during the electoral process?

Haynes Johnson: Our system depends upon an informed public, and the media help set the agenda for what people decide are the issues. The media either ignore a candidate, and therefore the candidate isn't heard at all, or they give him or her exposure, making that person and his views known. How you choose to make available to the public the information upon which a campaign rests—the issues, the candidates and the personalities—greatly affects the shape of a campaign.

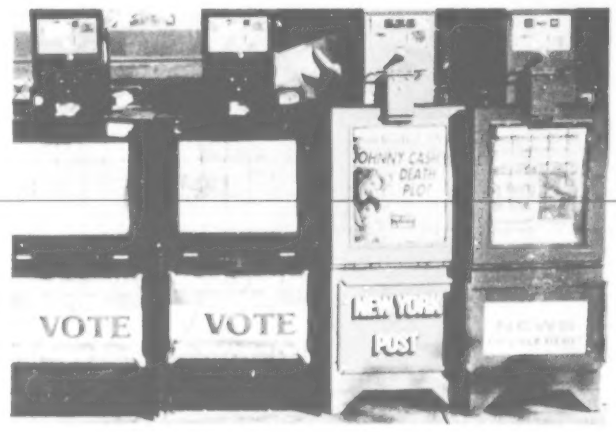
CLOSE UP: How do members of the media choose whom to cover and whom to ignore?

Haynes Johnson: That is a subject of great controversy. Critics of the press say there is too much power in the hands of the media. They say that the media are political brokers now, that they have the power to decide what the country will become. The truth is, it doesn't work that way, as nicely as it may seem. You cover the political process in the way you do everything else. It's an imperfect way; it's a subjective process. What a paper like the *Washington Post* might think is the most important story politically, the *New York Times* may not, nor the *Wall Street Journal,* nor the rest. So there is no one particular consensus that emerges out of the whole process. You look at local races, you look at national races, and out of this emerges a presidential candidate through the primary process.

One thing has changed tremendously, though, in the role of the press, and that has been the rise of television. Television has transformed the way we elect presidents. It has added a new dimension to the power and the influence of the press. Most people in America now get their news from television. The great struggle in American politics now if you're a presidential candidate is to get on the national network news. It is an intensely competitive process, so candidates have an army of people who are campaign experts. Consultants gain a great deal of money from the candidates by telling them how to devise media strategies. In fact, presidential campaigns are entirely designed around media strategies—how candidates can get their message out to the public, how they can look the best, how they can appeal, and so on.

CLOSE UP: A network president once made the observation that instead of ending with "and that's the way it is," a broadcast should end with "for further information, turn to your local newspapers." Are we ill served by this 45-second synopsis of the most important issues?

Haynes Johnson: I have thought a lot about this. I've watched seven presidential campaigns now, and that's quite a few. We've only had forty presidents in our entire 200-year history, and they're coming around very fast these days. There is more and more turnover. People today are better informed than they ever have been about the intricacy and the complexity of issues. Citizenship is hard work. It works if people choose to be informed. The information is there if you choose to go after it. I think that television reports ought to have broader coverage and greater depth. They should be more than fragmentary reports. You also have newspapers and magazines; there is an incredible array of information upon which a citizen can make an intelligent judgement. You can almost argue that the media serve up too much information. We are sometimes inundated with trivial information; there is too much on personalities rather than issues.



CLOSE UP: As an editorial columnist, you are not strictly a reporter of the news but an interpreter of the news. What should readers be aware of when reading an editorial opinion versus a newspaper article?

Haynes Johnson: Anybody who consumes any kind of information ought to be aware that it is a subjective process. The idea that it is all based on perfect truth is wrong. Human beings don't operate that way. We all see things differently. For instance, what I think might be the most important thing a candidate said in a debate may not be what you think is the most important. If we're in rival news organizations, I might tell my readers the most important thing said was "X" and you might say it was "Y." So you have to read very carefully, and you have to listen very carefully. A skeptical cast of mind is indispensible in a democratic society. I'm not suggesting that there is a deliberate conspiracy to distort the news, and I don't think that's true. I think good journalists are aware of their limitations. You know that you don't have the whole story. You know that you're being used in a way by the candidates. They're always putting their best foot forward to make themselves look good.

So the role of the press in addition to strict reporting is to examine and to criticize the candidates so that the public can get a sense of where they really stand, what they're really like and what the people who work with them feel. In the long run, that serves the democratic society pretty well.

CLOSE UP: We're approaching 1984 and a new presidential election. What role does the press play in influencing who the candidates will be?

Haynes Johnson: The big newspapers, the news magazines like *Time* and *Newsweek* and the networks are called the national press. If the national press decides to give more publicity to candidate "X" than to candidate "Y," "Y" may never be heard fairly. By deciding that someone is the "front runner," you have sort of anointed that person in the people's minds, and it gives that person a tremendous advantage. If I were to criticize the way we begin our presidential coverage, it would be on two levels. One, we still operate too much as if it's a horse race. Who's ahead? Who is the favorite? Who might be the next person? It's a very short sighted way of looking at things. It fails to examine what the candidates really stand for. What are their values? What might they do given the responsibility of being the next president? How would they perform on the basis of their past record? What do we know about their human qualities?

CLOSE UP: You developed the concept of taking "the pulse of the people" prior to elections. How do you go about doing that, and what is the pulse of the people telling you now?

Haynes Johnson: I'm preparing to leave this Saturday on a trip around the United States. I'll be gone for six weeks. I'll travel into every corner of the United States: the Midwest, the Pacific Northwest, the Southwest, the deep South and the industrial Northeast. Along the way I'll be writing stories about people I talk to, and I will try to draw a profile of each area I'm in, a cross section of opinion and attitudes from business people, from people who are on all sides of the political-economic spectrum. I'll talk to laborers, to people who are doing very well economically and to those who are out of work. I am trying to report on what the attitudes are in the country. I think that's a very valuable thing to do. We're a very large society, highly complex, and I think the press has a responsibility to attempt to report and put into context where we are right now. We're going through a very difficult time economically, in many ways the worst since the Great Depression. We have had the largest number of bankruptcies since 1932, the highest rate of unemployment since 1940. Our banking system is experiencing great strains. Not since the 1930's have we undergone such convulsions. How people are responding to these events, how they feel about them, what they would like to have done, is what I'm going to be trying to identify. It's not a definitive portrait ever; its a segment. We have a saying here that "journalism is history on the run;" it's the "first rough draft of history."

Electoral Votes by State

Look at *Table 11-2* on the previous page. It presents the electoral and popular vote for the three previous elections. Using that section of a government textbook on presidential elections, and the presentation of *Electoral Votes by States,* answer the following questions.

1. What is the total of electoral votes in the electoral college?

2. How is the electoral vote for each state determined? How many electoral votes does your state have?

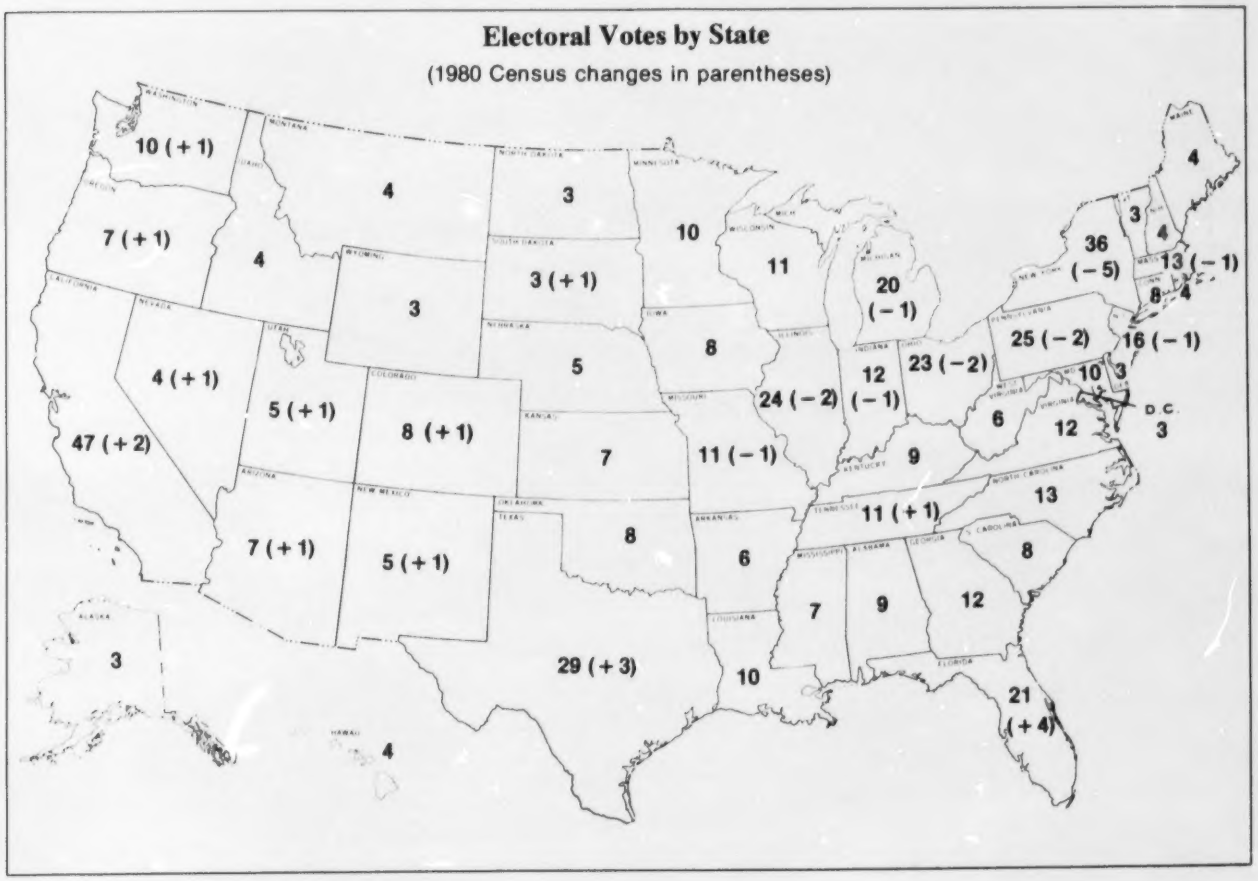
3. How is the population of each state related to the number of electors for each state?

4. How many electoral votes are needed by one candidate to win an election? What percent of the total does that represent? What happens if no candidate receives the needed amount?

5. What determines which candidate receives all the electoral votes from each state?

6. What is the fewest number of states needed to win an election? What are they?

7. Is it possible to win the popular vote but lose the election? If so, how?



The Road To The White House

Local and State Conventions

Meetings begin at the township or *precinct* level. The members of each political party meet and elect delegates to the district and then to the *state conventions*. At the state convention, delegates are chosen to represent the state at the national convention. At each level the presidential candidates compete to get their delegates elected.

Primary Elections

Some states have primary elections rather than conventions. The presidential candidates campaign against each other. In some states the primaries are called *presidential preference primaries*, which means that the voters vote for a particular candidate. In other states they vote indirectly for a candidate by voting for his/her delegates.

National Convention

Both the Republicans and Democrats hold their national conventions the summer before the election. These last about four days. The national convention chooses the presidential candidate, who then picks a vice presidential running mate.

Election Day

The Tuesday after the first Monday in November is election day. The voters choose a president by voting for the *electors* pledged to his candidacy.

Electoral College

It takes 270 out of 538 electoral votes to become president. The number of electors is equal to the total membership of the House of Representatives and the Senate, plus three for the District of Columbia. The electoral college meets officially in December to confirm the results of the election.

The 1980 Presidential Election

"Every time we choose a president, we are taking our fate in our hands, and therefore each presidential election is an awesome process."

Elizabeth Drew
Portrait of an Election

"Elections are important; they give Americans not only their chief sense of participating in their government but, more importantly, a sense of control."

Theodore H. White
America in Search of Itself

The story of the 1980 presidential election is instructive as a case study of how our electoral process works, what its strengths and weaknesses are and why certain candidates win and others lose.

Prior to the *general election* in November of an election year, in which one Democrat runs against one Republican, a series of *primary elections* are held within each party to select a single candidate. As recently as 1968, only 17 states held primaries. Instead, presidential candidates were selected by the party leaders and not by the members of the party. Although the image of "smoke-filled rooms" in which party bosses made decisions was exaggerated, it was not altogether false. Primary elections have been expanded as part of an effort to make the process of nominating a presidential candidate more democratic. In 1980 primaries were held in 37 states.

There are three basic types of primary elections:

- *Caucuses*—These are a series of meetings open to all party members. The first meetings are at the *precinct,* or neighborhood level. Party members vote for delegates representing the candidate of their choice. These delegates then go to caucuses which include all the precincts within a county. There new delegates are elected for the congressional district conventions; from there, the final two steps are the state and national party conventions.
- *Direct Primary*—This most closely resembles the form of the general election. The ballot lists all the candidates, and the voter chooses one. By voting for your favorite candidate, you actually are electing delegates to the national convention who are pledged to vote for that candidate.
- *Preference Primary*—The structure is the same as that of the direct primary with one major difference. The delegates identified with each candidate are not absolutely bound to vote for that candidate at the national convention. However, the preference primary is important because it shows the delegates and the nation who is preferred by the people of that state.

Candidates, A Crowded Field

By New Year's Day 1980 there were three major Democratic candidates:

- Jimmy Carter: President of the United States, Former Governor of Georgia
- Edward M. (Ted) Kennedy: Senator from Massachusetts
- Jerry Brown: Governor of California, Former Secretary of State of California

The Republican field was more crowded with seven major candidates:

- Ronald W. Reagan: Former Governor of California, Former candidate for the Republican Presidential nomination (1968 and 1976)
- George Bush: Former Congressman from Texas, Former Ambassador to the United Nations, Former Ambassador to China, Former Director of the CIA
- John B. Anderson: Congressman from Illinois, Chairman of House Republican Conference
- Howard H. Baker: Senator from Tennessee, Senate Minority Leader (1977-80)
- John B. Connally: Former Governor of Texas, Former Secretary of the Navy, Former Secretary of the Treasury
- Robert Dole: Senator from Kansas, Former Vice Presidential nominee (1976)
- Philip M. Crane: Congressman from Illinois

The Republican Race

On the Republican side the favorite was Ronald Reagan. In 1976 Reagan, like Ted Kennedy in 1980, challenged an incumbent president (Gerald R. Ford)

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for the party nomination. Of a total of 2257 delegates to the Republican convention, Reagan fell short by only 59 in 1976. Over the next four years he kept his campaign organization intact and stayed in touch with supporters around the country. Finally, on November 13, 1979, he formally announced his candidacy for the 1980 Republican nomination.

The first major primaries were in Iowa (January 21) and New Hampshire (Febuary 26). Iowa uses the caucus form and New Hampshire the direct primary. Here is one journalist's account of how the Republican caucus in the small town of Harlan, Iowa, (population 5,400) worked:

> Shortly after 7 p.m., the caucus-goers begin arriving, half an hour early. Every seat is soon taken, and still people are streaming in. Each Republican caucus makes its own rules. Mr. Kalal is unanimously approved as chairman, and he asks if anyone wants to say a word on behalf of a candidate. Grant Finley, the tall, soft-spoken president of the Western Engineering construction company, extols George Bush as "the best qualified." Others praise Reagan and Philip Crane, but no one speaks up for the other candidates. At 8:07 Kalal distributes plain white paper for the straw vote. "I think I brought enough paper," he frets aloud, "but you'll have to use your own pens—or borrow one from a neighbor." As the ballots are being collected, Leo Hough, a florist, raises a question. "I'm here for the first time, and I wonder how many other people are." Kalal addresses the crowd: "Raise your hands if you've ever been to a caucus before." In a sea of 131 faces, only 20 hands go up. The room breaks into laughter.
>
> While the votes are being tabulated, Kalal looks worried. He had hoped that the Reagan forces would dominate the meeting, but the results of the straw poll, now being chalked up on the board, are not encouraging: Anderson-2, Baker-12, Bush-48, Connally-6, Crane-9, Reagan-53. "It looks like this group is pretty well split among four candidates," says Kalal. "In the past, we've had winner take all, but I don't think that would be fair this time. I think this time delegates should be picked on a percentage basis. All in favor say 'aye.'" A chorus of "ayes" fills the room.
>
> It is now 9 p.m., and the caucus has been running on for over an hour. Kalal begins polling on national issues. Many questions are handled by a simple voice vote. "A national balanced budget?" asks Kalal. "Is there anyone against?" Not a squeak is heard.

One of the ironies of the primary elections system is that it usually is more important to win in small states like Iowa and New Hampshire than in a big state like California. The reason is that Iowa and New Hampshire primaries occur early in the election year, and victories there can give a candidate "momentum." Television coverage ensures that the whole country knows what the voters in these small states decide. There is also a tendency, especially by television news, to depict the primaries as a horse race. Critics say more time is spent telling who is winning than explaining what each candidate stands for. By the time the California primary took place on June 3, the pattern of the horse races had already been set. Iowa and New Hampshire might be small, but their primaries were extremely significant.

In the Iowa caucuses George Bush shocked everyone by beating Ronald Reagan by just over 2 percent of the votes.

The margin of victory was small. But given that six months earlier Iowa public opinion polls had given Reagan 48 percent and Bush 1 percent of the votes, it was a significant victory.

Analysts attributed George Bush's victory in Iowa to the same key factor that had helped Jimmy Carter win the 1976 Iowa Democratic caucuses: *grassroots organization*. Bush and his campaign workers spent months meeting people, talking with them, trying to convince them—that is, organizing support of the grassroots.

Martin Schram of *The Washington Post* describes the Bush campaign's long and energetic effort to build support:

> It is May (1979) and all of Iowa is bathed in a springtime of blue sky and sun, but in the Gateway Center Motel in Ames, Rich Bond and Lee Kidder are in no position to know it.
>
> They are in danger of being welded at the ear to their telephones...as they work at stacking the audience at an upcoming Republican party dinner. They are stacking, legally and ethically, in the name of George Bush.
>
> Few national politicians have heard much of this dinner that is planned for May 21 in Ames. But then few Iowans have heard much of George Bush, and practically none have heard of Rich Bond and Lee Kidder.
>
> No matter. This is how the presidency will be pursued—and perhaps won—in 1980. Two young men from out of state, sitting in a motel in Iowa in early 1979, working the phones, hoping they are making a president.

George Bush himself campaigned in Iowa for 27 *days*. Ronald Reagan spent only 45 *hours* in Iowa prior to the caucuses.

After the Iowa caucuses the Reagan campaign team drastically changed its strategy for the New Hampshire primary scheduled for February 26. Reagan spent more time shaking hands, giving speeches and meeting people than he had in Iowa. As Richard Wirthlin, a top Reagan campaign aide and specialist in public opinion polling, later explained:

> We re-learned a lesson that we had learned in 1976...namely, that our most effective, our most powerful, our most critical, campaign asset was the presence, appeal and campaigning ability of Ronald Reagan. We had put that asset pretty much under a blanket through Iowa.

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Reagan also benefited from the fact that New Hampshire Republicans were more conservative than Iowa Republicans. Bush was by no means a liberal like Ted Kennedy, but he was generally considered a moderate. Reagan's emphasis on such issues as large tax cuts, which Bush called "voodoo economics," was well received in New Hampshire.

Although the focus was mostly on Bush and Reagan, the five other Republican candidates were still running. When the suggestion was made that a debate be held, the key question was who should be invited. The *Nashua Telegraph*, organizers of the debate, decided only to invite Reagan and Bush. Both accepted the invitation. Baker, Crane, Dole and Anderson all protested that their exclusion was unfair to them and to the voters. In dramatic fashion they showed up at the Nashua High School gym on the night of the debate. Reagan, who earlier had agreed to the two-man debate, suddenly argued in favor of including the other candidates. Bush stayed opposed to the change, in large part because he benefited greatly from being seen as "separate from the pack," as the main challenger to Reagan.

In retrospect, this debate over the debate seems to have hurt Bush and helped Reagan more than any other factor in New Hampshire. Reagan came across as the defender of what is fair; Bush looked frustrated and selfish. No real issues were at stake. But as is so often the case, style and image sometimes have more impact on voters than does substance.

From a neck and neck race, the New Hampshire primary was transformed into a clear Reagan victory:

Reagan 49.6%	Crane 1.8%
Bush 22.7%	Connallly 1.5%
Baker 12.9%	Dole .4%
Anderson 9.8%	Others 1.3%

A week later, primaries were held in Vermont and Massachusetts. Reagan won in Vermont, and Bush won in Massachusetts. But the big news was that John Anderson, the most liberal of the Republican candidates, came in second in both states.

This was one case where second place was at least a partial victory. Suddenly John Anderson was seen as a serious candidate, a man who could attract large numbers of supporters. With Bush losing ground, might Anderson not be the best candidate to challenge Reagan?

The big losers in these early primaries were Howard Baker, Robert Dole, John Connally and Philip Crane. And within a six-week period, all had withdrawn from the race.

Why did they decide to abandon campaigns on which a great deal had been spent and that had been planned for a long time? One reason, simply, was money. Running for president is very expensive: John Connally, for example, already had spent $12,000,000. Campaign contributions become harder and harder to come by when a candidate is losing.

The second reason concerned the public perception of the primaries as a "horse race." More attention was paid to who was winning than to what the candidates were saying. Candidates knew that voters in the remaining primaries—and as of March 15 there still were 26 to go—were unlikely to "bet their votes" on "horses that were way behind."

Left in the race were the leader, Ronald Reagan, and the challengers, George Bush and John Anderson. Reagan won the Illinois primary on March 18. George Bush came back to win in his home state of Connecticut.

By March 25 Reagan had 296 delegates, Bush 68 and Anderson 46. After four more primaries in April (Kansas, Wisconsin, Louisiana and Pennsylvania) and three more Reagan victories (Bush won in Pennsylvania), Reagan had 443 delegates, Bush 102 and Anderson 52.

On April 24 John Anderson announced that instead of continuing to seek the Republican nomination, he would run for president as an independent candidate:

> Too many people in our nation are disillusioned with the prospective choices our party structures are offering. The result is frustration, apathy and despair.... I think in giving myself the option, and giving the American people the opportunity to vote for me in November, I am broadening the base of the political process in this country.

No independent or "third party" candidate had ever won a presidential election.

So now it was Reagan vs. Bush, head to head. And Reagan was the clear winner. After Bush won in Pennsylvania on April 22, Reagan won 7 of the next 9 primaries. And on May 26 George Bush conceded defeat, asking his delegates to cast their ballots for Reagan at the Republican convention.

Bush's skillful grassroots organization brought him some success in the early primaries. His appeal to more moderate Republicans led him to some victories in the Northeast and Midwest. Ultimately, though, Ronald Reagan emerged victorious. Why?

Four principle reasons explain Reagan's victory in the primaries:

- Image—Bush was a skilled campaigner, but he could not match Reagan. Reagan, a Hollywood actor and a more experienced campaigner, was better able to cultivate an appealing image.
- Issues—Polls show that conservative Republicans

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vote in the primaries more often than do more moderate Republicans. Reagan's positions on key issues like taxes, foreign policy and government spending were viewed more favorably by these voters than were Bush's more moderate positions.

- Organization—Bush's campaign staff proved to be more highly skilled than anticipated. But the Reagan staff was more experienced, having first supported Reagan's bid for the presidency in 1968.
- Money—Campaigning is expensive. Lots of money doesn't guarantee victory, as John Connally found out. But it helps. The Reagan campaign had a major fund-raising advantage over Bush.

The Democratic Battle

The Democratic race followed an unusual pattern. It was not common in American politics for an incumbent president to be challenged from within his own party. But Jimmy Carter was not a popular president. Back in the "honeymoon period" in early 1977, a Gallup poll found that 67 percent of the American people approved of Jimmy Carter. But by July 1979 only 28 percent of the people still approved of his performance as president. This was a lower ranking than even Richard Nixon had received at the height of the Watergate crisis.

The Gallup poll also asked Democrats their feelings about a Carter vs. Kennedy choice. The poll results showed that Ted Kennedy had a big lead for all of 1978 and most of 1979.

On November 7, 1979, Senator Kennedy officially announced that he would challenge Jimmy Carter.

In the weeks following Kennedy's declaration of his candidacy, however, his massive lead in the opinion polls quickly disappeared. The Iowa caucuses and New Hampshire and Illinois primaries gave President Carter three impressive victories:

	Iowa	N. H.	Ill.
Carter	59.1%	47.1%	65.0%
Kennedy	31.2%	37.3%	30.0%
Brown	—	9.6%	3.3%

After the Iowa caucus one political commentator wrote that Carter's victory "put Senator Kennedy on the ropes."

Why the sudden surge in Carter's popularity and the dramatic collapse of the Kennedy candidacy? Three factors that often influence elections came into play: (1) the "rally round the flag" effect of foreign policy crises, (2) the powers of incumbency and (3) judgements about a candidate's personal character. Let us look more closely at each of these.

For months Kennedy had planned the announcement of his candidacy so as to capture national headlines, but although he made the front page, attention was riveted on another story: the storming of the American Embassy in Iran and the taking hostage of more than 70 Americans. Not only did the hostage crisis dominate the media, but according to Haynes Johnson, one of the nation's leading journalists, it gave the president a stature he had failed to achieve in three years in office.

Americans tend to "rally round the flag" when faced with threats from other countries. When Kennedy criticized the president's decision to allow the Shah of Iran into the United States, he was subjected to a flood of criticism. The Soviet invasion of Afghanistan in late December added to the sense of crisis. As a result, Carter's approval rating soared to 61 percent in January 1980.

The second key factor was incumbency. An incumbent president can approve grant applications, political appointments and other requests made by political supporters. He also can time these approvals to coincide with primary elections. Such manipulation of the *powers of incumbency* are not illegal; in fact they have been part of the game of politics for as long as anyone can remember. Theodore H. White, who has covered presidential elections as closely as any other journalist, summarized Jimmy Carter's use of his incumbency:

> For Massachusetts, a special grant of $3.3 million for the city of Lynn, once the shoe capital of America, to rebuild its decaying downtown.... For dairy farmers across the nation (just before the Wisconsin primaries), a decision not to carry out a scheduled cut in price supports for milk products.... For New York, grants announced by every visiting member of the administration.... And for those who raised resistance to the Carter drive: a cutoff of federal funds. In October, Mayor Jane Byrne was told by the White House that U.S. Air Force facilities at O'Hare Field would be relocated to allow Chicago to expand its major airport. But on October 27 Mayor Byrne announced her support of Kennedy against Carter in the Illinois primary. Retribution was swift; less than a month later, the secretary of transportation revealed that the Cabinet had lost "confidence" in Mayor Byrne, and would look for opportunities to deny transportation funds to Chicago and its mayor.

In addition to the help Carter received from the "rally round the flag" feeling and the powers of the incumbency, Kennedy was seriously hurt by negative judgements about his character. People still remembered the "Chappaquidick incident."*

The final irony was that the Kennedy name, which

*Editor's Note: In 1969, a car that Kennedy was driving went off the Chappaquidick bridge on Martha's Vineyard. A woman passenger, Mary Jo Kopechne, drowned. Although Kennedy was cleared of all criminal charges, the incident remained an issue in the 1980 election.

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in many ways had helped his candidacy, also came to hurt him in other ways. Political analyst Elizabeth Drew described the dilemma:

> Virtually each day Kennedy was faced with what was probably the most painful criticism of all: that he was not as good as his brothers. All his life, it seemed, he had been measured against them and now in the longest and most valuable test, he was held to be falling short. This could not help his confidence.

Kennedy did better in the northeastern and western states. But Carter piled up big margins in the South and Midwest.

Kennedy's victories came largely in states where such traditional Democratic groups as labor, the urban poor, intellectuals and other liberals represented large voting blocs.

As the nation's economic problems worsened in April and May—soaring interest rates, inflation and unemployment—Kennedy stressed the economy as his main issue. He gained ground, but in the end it was a question of mathematics: Carter already had won more than enough delegates to be nominated at the national convention. Kennedy was strengthening his position, but, as the Republicans headed to Detroit and the Democrats to New York for their conventions, it appeared to be too little too late.

The Conventions: Nominations and Party Platforms

The national party conventions mark the end of the primary elections process. The contest within the party ends, and the party tries to close its ranks. Four main functions are performed by the convention:

- A presidential candidate is nominated.
- A vice presidential candidate is nominated.
- A party platform, the official positions on major issues, is written.
- Through extensive television, newspaper and magazine coverage, national attention is focused on the party and its candidates.

For the Republicans the first step—selecting a candidate—was straightforward. George Bush had dropped out of the race before the convention. No further challenge was made, and Ronald Reagan was nominated easily. The choice of a vice presidential candidate, however, was more complicated. A strong movement developed to put together a "dream ticket" with former president Gerald R. Ford as the vice presidential candidate. Some analysts suggested transforming the vice presidency into a "co-presidency." This idea carried enormous constitutional problems, and for this and other reasons it was dropped. Reagan then selected George Bush as his running mate. Although they had been rivals during the previous six months, it was thought that Bush's image as a moderate might help Reagan win states like New York and Pennsylvania.

For the Democrats, selecting a candidate sparked controversy. Kennedy challenged the rule preventing delegates from changing their nominations at the convention. He argued that delegates should be free to rethink their choice for the best candidate. In a fairly close vote the Kennedy challenge to the rule was defeated, and Jimmy Carter was renominated. There was little disagreement that Vice President Walter F. Mondale should also be renominated.

At both conventions the biggest battles concerned the party platforms. Candidates are not bound to support the platform, although their views do provide voters with a statement of what the party stands for. At the Democratic convention Kennedy fought to make the platform more liberal. At the Republican convention Senator Jesse Helms (R-N.C.) and Representative Jack Kemp (R-N.Y.) led the fight to make their party's platform more conservative.

Newsweek magazine claimed that "the Democratic and Republican platforms were even more sharply divergent than the two parties' nominees." Overall they offered very different philosophies of government. The Democrats vowed to continue using government as a force for equality, the public interest and assistance to the elderly, the unemployed and the poor. The Republicans argued that government was part of the problem rather than the solution, and that the public interest would be served by less, not more, government.

The General Election: The Candidates' Strategies

With the nominating process of primaries, caucuses and conventions behind them, both candidates turned to the *general election* scheduled for November 4. The biggest obstacle Jimmy Carter had to overcome was his own record as president. The powers of incumbency helped him defeat Ted Kennedy in the primaries. But from that point onward, in the view of his own pollster and campaign aide, Patrick Caddell, incumbency was a major liability. In a then-secret report dated June 25 Caddell wrote:

> President Carter faces an extremely difficult re-election.... The public is anxious, confused, hostile and sour. Pessimism remains high... More to the point, the American people do not want Jimmy Carter as their president.

In addition to convincing voters of his own virtues, Carter had to convince voters that Ronald

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Reagan was not qualified to be president. Caddell also recommended:

> We must make people not only concentrate on Ronald Reagan, but we must help make that as uncomfortable as possible.... He (Reagan) has made over the years and in his campaign some incredible and often naive statements. There is plenty to work with here from domestic issues—for example, on the environment: "If you've seen one tree, you've seen them all"—to foreign policy: "blockade Cuba." He can be hammered on many, all raising the point: "Would you trust this man to be president?" His simplicity of view and experience raises real questions of whether he can handle the complex problems of the presidency.

The Republican strategy emphasized Carter's record and tried to dispel the perception of Reagan as incompetent and extremist. Pollster and campaign aide Richard Wirthlin put together the same kind of report for Reagan as Caddell did for Carter:

> The unsettling prospect for the Democratic incumbent is that his poor job performance has so damned his re-election possibilities that people are not inclined to vote for him. He is described as "a failed president...a total disappointment." Of all incumbent presidents in recent history, *Carter is the most beatable.*

Mr. Wirthlin then went on to outline a strategy for communicating the Reagan campaign's image of Carter:

> Reinforced through our media and spokespersons (not necessarily through Governor Reagan), Carter's major weaknesses—that he is:
> •an ineffective and error-prone leader
> •incapable of implementing policies
> •mean-spirited and unpresidential
> •too willing to use his presidential power politically, and
> •vacillating in foreign policy and creating a climate of crisis.

In addition to undermining Carter's image, the Reagan campaign had to dispel several perceptions of Ronald Reagan held by the general public. For example, in foreign affairs, too many people had a sense that "he would be too quick to push the nuclear button." In economics, there were doubts as to whether Reagan's plan would deal "with the full spectrum of economic complexities." And more generally, people wondered whether a 69-year-old former movie actor was up to the job of leading the world's richest and most powerful country.

For John Anderson, devising a strategy was an even more complicated task. As a third party candidate in a country where no third party ever had come close to winning the presidency, Anderson first had to convince people to take him seriously. A *Time* magazine reporter assessed the situation:

> The independent candidacy of John Anderson has always faced a kind of Catch 22 dilemma: Millions of Americans were not prepared to vote for him unless they were convinced that he had a chance to win. But he had no chance to win unless enough Americans backed him in the polls so that the voters thought he could win.

Then he had to hope that people who opposed Reagan would support him rather than Carter.

To win, Anderson had to develop positions on the major issues that would attract supporters, improve his own image from that of a smart but stiff congressman to a dynamic leader, and raise the money necessary for getting these messages across.

Key Factors in the Campaign

Despite major differences on many issues, as outlined in party platforms, the battles were fought over such questions as who was the most likeable, who the most intelligent, and who the most trustworthy.

Fighting the "dangerous extremist" label, Reagan tried to make the most of his "matinee idol" image of being folksy, a nice guy, a believer in traditional values. Elizabeth Drew's report of a campaign stop at a festival in Philadelphia captured the thrust of the Reagan campaign:

> Reagan and his wife arrived at the site aboard a trolley. Reagan is dressed in a brown plaid suit with a white handkerchief in his breast pocket; Mrs. Reagan is in a beige silk print dress.... Reagan smiles and moves his head up and down in time to the music. After a while—at Nancy Reagan's suggestion, it seems—the Reagans get up and dance, going into a subdued jitterbug. Reagan does look the matinee idol now. He looks well—tanned and healthy.
>
> In his speech today, which he reads, Reagan refers to the fact that the steps have been made famous by *Rocky*: "They symbolize determination, hope, a belief in a dream."

The Carter campaign, however, set out to prove that the matinee idol was not much more than that. President Carter put it to one group of potential voters this way:

> When you are sitting across the negotiating table with President Brezhnev trying to guarantee the future of our nation and the peace of the world, you can't rely on 3-by-5 cards, and you can't read from a teleprompter.

By way of contrast, one of Carter's television commercials showed him in the Oval Office examining a document late one night. Violin music gently swells in the background while a strong voice comes forth:

> Today the chief of state is an international figure. The Office of the President has a powerful effect on the United States and upon the world. There is nothing 9 to 5 about it.

By mid-October, however, the Carter strategy of attacking Reagan had begun to backfire. In two

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speeches, Carter intensified the attacks to the point where the press and the public reacted against his "meanness." Carter warned that the election would determine whether:

> America will be unified or, if I lose the election, whether Americans might be separated, black from white, Jew from Christian, North from South, rural from urban.

Although his image suffered from the "meanness" tag, Carter also lost support over his positions on the central issues of the day. Most analysts agree that there were two critical issues in the 1980 campaign: (1) the economy and (2) foreign policy. On each of these, Ronald Reagan's positions gained more votes than did Jimmy Carter's.

"Pocketbook" issues—inflation, unemployment, the energy crisis, recession and taxes—were on the electorate's mind. The American economy was in terrible shape in the fall of 1980. High inflation, high interest rates, high budget deficits and high unemployment—undoubtedly the Carter Administration didn't deserve sole responsibility for these problems, but voters have a tendency to "blame the president." Candidate Reagan hammered away at this issue. In a speech to a group of senior citizens, he painted a stark but easily understandable picture:

> If the present rate of food price inflation continues for the next four years, a pound of ground beef that now costs $2.00 would cost $4.92, chicken that costs 80 cents a pound would cost $1.97, a dozen eggs that now cost $1.10 would cost $2.71, and a gallon of milk that now costs $1.75 would cost $4.31.

A later poll would show that the Republicans were considered better than the Democrats at:

- controlling government spending: 69 percent vs. 17 percent
- cutting inflation: 62 percent vs. 17 percent
- holding down taxes: 60 percent vs. 22 percent
- decreasing unemployment: 40 percent vs. 39 percent

The same poll favored the Republicans on the question of maintaining military strength by a 65 percent to 19 percent margin. Despite Carter's efforts to cast Reagan as a warmonger, 41 percent of the respondents also believed the Republicans were more likely to maintain world peace (36 percent said the Democrats would). The Soviet invasion of Afghanistan and talk about Soviet military superiority contributed to the swing to Reagan on foreign policy. But the key issue was the hostage crisis. As we noted, this issue had helped Carter defeat Kennedy in the primaries. But the longer it went on, the less people rallied around Jimmy Carter, and the more they held the whole issue against him. As Elizabeth Drew noted:

> The hostage crisis became to many a symbol of what they saw as a decline in our power. And it has added to an impression of Carter as hapless. This had to do very much with his style: The term that came to be used about him in private conversations was that he was a "wimp," and he began to be portrayed in cartoons as peanut-size and looking bewildered. When he tried to explain the point of being patient, the futility of force, he could not do it forcefully. When he used force, he botched it and was never able to explain to critics on any side why the plan made sense.

Reagan also benefited from the money backing his candidacy. Since the Watergate scandal, presidential campaigns have been financed by federal funds collected on a voluntary basis from taxpayers. This law was intended to make corruption and illegal contributions less likely, and to ensure that both major party candidates would have equal campaign pocketbooks. Thus, in 1980 both Reagan and Carter received $29.4 million in public financing.

Like many laws, however, this one had loopholes. Estimates are that an additional $30 million was raised by "political action committees" (PAC's), which legally were separate from the Reagan campaign organization but which supported Reagan. Americans for Reagan and Americans for Change, two such PAC's, were chaired by Republican senators and were clearly pro-Reagan. In response to the law concerning campaign financing, they argued that the First Amendment guaranteed their rights as individuals to make unlimited "individual expenditures."

Many other PACs sought to influence the presidential contest: labor PACs for Carter, business PACs for Reagan. Among the biggest spenders and most active campaigners were PACs of the so-called Moral Majority. The Reverand Jerry Falwell was the main spokesman for Moral Majority. Each week 18 million Americans watched his television show, the Old Time Gospel Hour. Each week Falwell's viewers contributed $1 million. According to Richard Viguerie, chronicler of the "New Right," Falwell spoke for:

> ...the backbone of our country—those citizens who are pro-family, pro-moral, pro-life and pro-American, who have integrity and believe in hard work, those who pledge allegiance to the flag and proudly sing our national anthem. He has described that group of citizens who love their country and are willing to sacrifice for her. America was built on faith in God, on integrity and on hard work.

Moral Majority may or may not be an actual majority as its leaders claim. But it did play a major

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political role by contributing money and getting people to vote in the presidential as well as many congressional races.

The Anderson Candidacy

In early September it looked as though John Anderson might have an outside chance of winning. A poll taken by the *Los Angeles Times* gave Reagan 37 percent, Carter 36 percent and Anderson a healthy 18 percent of the vote. Patrick Caddell expressed the concern of the Carter campaign, telling one reporter that although he saw Carter ahead of Reagan in a two-man race, "When you toss Anderson in, the picture totally flip-flops. In almost all the major states, Anderson hurts us more than Reagan.

Anderson appeared to get a big break when the League of Women Voters invited him to debate Reagan and Carter. Carter, however, insisted on a two-man debate, and refused the League's invitation. So on September 21 America saw Reagan vs. Anderson on national television. Both candidates tried to persuade viewers of the virtues of their positions on the issues as well as of themselves as leaders. Most observers felt Anderson was articulate on the issues but unable to improve his overall image.

By early October Anderson had fallen to 9 percent in the public opinion polls. His base had been cut in half. Nevertheless, on election day voters across the nation had the option of voting for John Anderson if they were dissatisfied with the choices offered by the two major political parties.

Television and the Reagan-Carter Debate

Throughout the campaign the candidates had relied heavily on communicating their views to the public through television coverage. Campaign appearances were "media events" more so than simple face to face meetings. For example, *The New York Times* reported on some early "made for TV" campaign appearances by both major party candidates:

> President Carter and Ronald Reagan were seen in the flesh Monday by no more than 50,000 potential voters.... However, the people in Tuscumbia, Alabama, and Jersey City, New Jersey, were not the real audience. They were more like stage props that enabled the candidates to make an election pitch to at least 30,000,000 Americans watching the evening news on the three commercial networks.

In addition to the free exposure of television news shows, the candidates bought time for their commercials.

On election eve Reagan ran a 30-minute commercial, and Carter ran one that lasted 15 minutes. The main reason for the difference was that Carter had less money available to buy expensive television time.

The most important television time had come a few days earlier in the "Great Debate" of 1980. After much indecision, both candidates had agreed to a two-man debate. John Anderson protested his exclusion but to no avail. On October 28, 100 million Americans tuned their television sets into the Reagan-Carter debate.

Theodore White has written of the critical importance of debates in presidential elections:

> The nationally televised debate is where, finally, the struggle over image and issues links. There, the two candidates not only must perform, but must explain. They bring together in one audience the majority of the vote of the plain Americans and the critical votes of the ethnic and minority blocs. The debates shift votes more than any other single action of the final election campaign.

The debate lasted 90 minutes. The candidates responded to questions on war and peace, inflation, urban problems, civil rights, arms control, international terrorism, energy, ERA and a host of other issues. For the most part, the exchanges were predictable and even. The major blunder of the evening was made by Carter, and it was not so much what he said as how he said it. In trying to emphasize the importance of the issue of arms control, Carter stated that:

> I had a discussion with Amy (his 13-year-old daughter) the other day before I came here to ask her what the most important issue was. She thought nuclear weaponry and the control of nuclear arms was.

While this anecdote was intended to make the issue hit home, it totally backfired; people felt he had trivialized the issue and made himself faintly ridiculous.

Reagan also fared better on the concluding remarks. Like lawyers addressing a jury, the candidates had a few minutes to make one final pitch. Reagan's was the most powerful:

> Are you better off than you were four years ago? Is it easier for you to go and buy things in the stores than it was four years ago?.... Is America as respected throughout the world as we were four years ago?.... I would like to lead that crusade...to take government off the backs of the great people of this country and turn you loose again to do those things that I know you can do so well, because you did them and made this country great.

Over the next two days the public opinion polls showed Reagan to be the clear victor. Perhaps even more significant was the decline from 43 percent to 35 percent in the number of people who believed Reagan "would get us into war" (CBS Poll). Just as John F. Kennedy's victory in the debates was a

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major factor in his triumph on Election Day 1960, and Jimmy Carter's debate victory heralded his win on Election Day 1976, so too did Ronald Reagan appear to be in very good shape with Election Day 1980 around the corner.

The Election: What Happened and What It Means

In the early evening hours, as the first votes were counted, state after state reported Reagan wins. By 8:15 Eastern Standard Time NBC News announced its projected winner: Reagan.

We would learn later that Jimmy Carter's closest advisors had told him the night before that victory was beyond their grasp. What was most surprising to the Carter campaign staff and to most Americans was the size of the Reagan victory. Of the 86,495,678 votes cast, Reagan took 50.7 percent, Carter 41.0 percent, and Anderson 6.6 percent.

Electoral vote totals were even more overwhelming. Each state has total electoral votes equal to its number of representatives and senators. In 1980 Reagan received the majority of votes in 44 of the 50 states and piled up a 48 percent to 49 percent landslide victory in electoral votes. Anderson did not win any states and therefore received no electoral votes.

The questions everyone wanted answered were: Who voted for Reagan? Why? An analysis of group voting patterns showed that in all but one category of votes (by sex, education, professional status, age, religion, geographic area, etc.), Reagan had been the winner.

Jimmy Carter got *fewer* votes in 1980 than in 1976 from 23 of 24 groups. Nonwhite voters were the only exception, probably because of Reagan's reputation on civil rights.

One of the largest swings was among voters who consider themselves *Democrats*. Reagan got 8 percent more of their votes, while Carter lost 13 percent more than his 1976 total.

Did this mean that these people were joining the Republican party? Party labels are much less important than issues and images of the candidates themselves. In fact, one poll showed that 34 percent still believed there was "hardly any" difference, and only 23 percent that there was a "great deal" of difference, between the Republicans and Democrats.

More than anything, the vote was a rejection of Jimmy Carter. An Election Day poll showed a 70 percent negative rating of how he had performed his job. To his credit, many people felt that Carter had been willing to tackle difficult issues. But concerning the issues of most importance to the voters, his record was much weaker.

And what of John Anderson? Why did he receive only 6.6 percent of the total vote and no more than 15.1 percent in any single state? One reason was money. Anderson was not directly eligible for public financing. A second reason was that he never could shake the image of being only a "spoiler" and not a major candidate. He never could get much support from other representatives, senators or other established politicians. Consequently, instead of a bandwagon rolling rapidly along and attracting people to jump on, Anderson's candidacy was widely perceived as being more like a sinking ship. Finally, his own lack of leadership hurt him; even those who agreed with him on the issues or who disliked both Reagan and Carter found this a major liability.

And the nonvoters? More people didn't vote, or abstained, than ever before. Nonvoters tend to be young, poor, minimally educated and nonwhite. Their ranks swelled in 1980 as a number of people abstained to protest what they saw as unacceptable candidates.

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8. Federalism

The North! The South! The West! The East!
No one the most and none the least,
But each with its own heart and mind,
Each of its own distinctive kind,
Yet each a part and none the whole,
But all together form one soul.
—Edmund Vance Cook

In 1787, eleven years after the Declaration of Independence, our young nation found itself without an effective system of national government. The Articles of Confederation had failed to give the national government enough authority to forge a union out of thirteen states, each with diverse interests. The new Constitution, ratified in 1789, established a federal system that divided power among federal, state and local governments. What the respective roles of these three levels of government should be remains a controversial topic today.

The Constitutional Convention created a strong federal government, but the authors of the Constitution could not have envisioned the extensive role it would eventually play. As the federal government became more concerned with economic and social issues, its size and authority grew significantly. Government budget outlays have grown from $11 million in 1800 to $521 million in 1900 to over $800 billion in 1983.

Today, there is much concern that the federal government has grown too large and inefficient. President Reagan has pledged to reduce the size of the federal government and restore much legislative authority to the state and local levels. Many of his critics are concerned, however, that federal delegation of authority to state and local governments will result in the elimination of social welfare and civil rights programs needed to fight poverty and discrimination.

This chapter discusses federalism and its future in American government. As your read the articles, consider what concerns might best be managed by the federal government, by state governments and by local governments.

In This Chapter

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The former director of policy implementation at the U.S. Advisory Commission on Intergovernmental Relations discusses the past and future of our federal system of government.

David Durenberger
The Smokestack Federalist Papers
A U.S. senator (R-Minn.) and chairman of the Intergovernmental Relations Subcommittee examines two popular theories of federalism and proposes an alternative to them.

Federalism: What Kind Will Work?
Richard S. Williamson
Fat Government Has to Go
The presidential aide who helped author President Reagan's New Federalism initiative discusses federalism from the Reagan administration's point of view.

Tom Wicker
The New States' Rights
Could the country really be governed less by fifty state governments than by one federal government?

Case Study: Federalism
Building America's Highways: A Federal-State Partnership
Building a highway system to link the nation's cities required cooperation and billions of dollars.

Words to Know

Articles of Confederation
block grant
confederate system
Connecticut Compromise
devolution
federalism
intergovernmental relations
reapportionment
revenue sharing

"To Form a More Perfect Union:" Contemporary American Federalism

Lawrence Gilson

Lawrence Gilson is the vice president for government affairs of the National Railroad Passenger Corporation, also known as Amtrak. He is a former assistant to the president for intergovernmental relations. Before that he was the director of policy implementation at the U.S. Advisory Commission on Intergovernmental Relations, a commission charged with reviewing the operations of our federal system of government. In this article Mr. Gilson discusses the past, present and future of federalism.

For nearly 200 years now, Americans have tried to reconcile the twin goals of diversity and unity through a federal system of government. Federalism means the division of power between a national government on the one hand and state and local governments on the other. This includes fiscal and political accountability at each government level—from the White House to the courthouse.

This shared power, or "federal," characteristic of our system has provoked controversy since the founding of the republic. Today, as at other times, the question is raised among statesmen, scholars and citizens alike: Is such a system of shared and divided power equal to the complex challenges of domestic government in the United States? As America prepares to embark on its third century, its central goal is the same as it was in 1776, 1787, 1861-1865—"to form a more perfect union."

Capacity to Adjust

For nearly 200 years the federal system has survived and has adjusted to enormous changes in population, technology, living patterns and governmental needs. It weathered the Civil War and foreign wars, official corruption and political foolishness, indecision and lack of action, sins both of omission and commission. It also has had dramatic saviors and unsung heroes, as well as articulate opponents and unknowing subverters. From time to time, particular events or policies have thrown the system out of balance and observers have feared its fate. But for two centuries federalism has managed to adapt to new circumstances without sacrificing its essential nature. The system has seen many swings of the pendulum, but it has always adapted.

The Great Depression and the New Deal present one oversimplified example of the kind of pendulum swings that have characterized this adaptability. In the 1930's the federal government—which had the financial resources—was forced to take steps to provide citizens with economic protection from the ravages of the Great Depression. One major step was the Social Security Act, which provided federal aid for the elderly, unemployment compensation and other assistance programs. Additionally, federal aid to states was expanded to many new fields. The results brought economic security to millions, but were accompanied by increasing centralization of power in the Washington bureaucracy. Much of the decision making was done by the federal bureaucrats who handed out the grant money, and the state and local bureaucrats who applied for it, rather than only by those elected representatives who were politically "accountable" to the people.

More Power to the States

By the middle 1960's the pendulum had begun to swing the other way. In 1972 two federal actions added momentum—revenue sharing and the partial nationalization of welfare. Revenue sharing was a new program through which the federal government provided relatively "no strings attached" money to state and local governments. State and local officials could set their own priorities and make their own decisions. Although revenue sharing violated the belief that the government that raises money should spend it, the objective of centralization seemed more important.

The other federal action was the beginning of the nationalization of welfare, with federal takeover of the adult assistance categories (aid to the aged, blind and disabled). Although this appeared to be a move toward centralization, it did remove the heavy burdens of paying for welfare from the states, leaving them better able to assume other, more appropriate, responsibilities. It also meant greater equity and unity for welfare, since there were no longer 50 separate systems.

The Urban Crisis and State and Local Governments

America's grassroots governments—those of the cities, counties and towns—today face greater challenges than ever before. Problems emerge, and citizen demands grow at a rate far greater than the legal, structural and financial capacity to deal with

them. Here one sees most dramatically the triple mismatch between fiscal resources and human needs, political boundaries and population settlement patterns, and the states' constitutional role as parents of these units and their unwillingness to "grasp the local government nettle."

Two examples of the mismatch between financial resources and human needs involve housing and public education. Housing costs more and is worth more in the suburbs, making it harder for low-income people to leave poor central city neighborhoods. The higher value of suburban housing also means that suburbs can collect more money through property taxes than cities can, and are therefore able to finance their government services. Yet with more poor people, central cities have a greater demand for government services. Comparing data from 1957 and 1970, in both years central cities spent more than 25 percent more per person on government services than did their suburban counterparts.

Much of this money spent by central cities goes toward noneducational services. Over the years suburbs have spent more per pupil on education than have central cities. At the same time, many of those in the city are harder and more costly to educate because of their socioeconomic disadvantages. Financial aid from state governments has helped to close the gap caused by the financial resource-human needs mismatch.

In addition, taxes are higher in central cities, although the differential is decreasing. A measurement of tax burden, considered a very rough one by economists, shows people in central cities paying 6.7 percent of their income in taxes while the suburbanites pay 5 percent.

Along with these problems have come changes in patterns of population settlement. In 1970, 66 percent of the U.S. population resided in "metropolitan areas." Typically, a metropolitan area consists of a central city surrounded by suburban municipalities, towns and counties. Since 1950, many central cities have declined in population, and the 1970 census showed that for the first time in our history, more people were living in suburban areas than in central cities. Some of the older, fully developed suburbs also suffered a net decrease in population.

Racially, the cities are getting blacker and the suburbs whiter. Between 1960 and 1970, the white population declined in 40 of the 72 largest central cities. In all but three of these cities, the non-white population increased.

State Modernization and the Urban Crisis

At the root of the urban crisis of recent years are many major sins of omission and commission made by the states in the 1930s, 1940s and 1950s. Cities and suburbs, counties, townships and boroughs alike are the legal creations of the state. Decades of state government inaction and mistakes contributed to the deadly combination of restricted annexation and unrestricted incorporation; the chaotic and uncontrolled mushrooming of special districts; the limitations upon municipal taxing and borrowing powers; the abdication of the all-important control over urban development, and the reign of chaos of the system of criminal justice.

But in the mid 1960s, the activity and initiative of the states began to quicken, due in part to the reapportionment decisions and in part to the strengthening of the two-party system in many states previously under one-party dominance, as well as to pressures from the federal and local levels of government. With urban areas better represented in their legislature, states began to take a more active interest in urban affairs. The membership shake-up of the legislatures resulting from reapportionment, including the infusion of much new blood, also created a more favorable environment for reform of the legislatures as institutions. More legislatures began to hold annual sessions. Year-round professional staffing of major standing committees was begun in a few states. Codes of ethics, conflict-of-interest laws, recorded roll calls and open committee meetings—"sunshine laws"—were enacted in several states. Also, the legislatures began to be much more supportive of constitutional revision (so long feared lest the "Pandora's Box" of reapportionment be opened).

On the management and policy side, executive and legislative salaries were raised to attract adequate talent. Centralized budgeting was instituted, executive branch reorganization became popular and governors began to get a handle on what was happening. Planning was strengthened, court reform was undertaken, school finance overhaul was begun and land use programs were born. In brief, the modernization of state government has been making considerable progress across the country. This has been one of the most heartening aspects of the current pendulum swing in American federalism.

The Future Agenda

The agenda for this third century of American federalism is long and tough. The minor problems and the simplistic solutions never made it onto the agenda. Some difficult issues began to be confronted in the middle 1960s and early 1970s, but it is the nearly impossible tasks that remain.

Local government must be reorganized and simplified. Metropolitan areas must become governable, and their internal socioeconomic disparities must be mitigated. Equality of educational opportunity must be-

come a living reality instead of an empty phrase. Growth policies must be formulated and reconciled among localities, states and the federal government, and among economic, environmental and social values. The property tax must be made equitable and effective. The state governments must perform imaginatively and courageously for both their urban and rural constituencies. The federal grant system must be made manageable, and thereform of the welfare and criminal justice system must proceed swiftly. Ways must be found to assure that the diversity in the federal system continues to operate as a strength and not as a weakness.

In short, during its third 100 years, the United States will have to address new and awesome questions not conceived in its second century. But at the heart of these challenges and opportunities will remain the original goal and continuing message—"to form a more perfect union."

Powers of National, State and Local Governments

The essence of federalism is the division of powers between the national, state and local governments. This division of powers is based on the Constitution, as well as on laws enacted and precedents set throughout our history. Certain powers have been given exclusively to the national government. Other powers have been reserved for state and local governments, most notably by the Tenth Amendment:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Other powers are called concurrent powers, because they have been shared by the national, state and local governments. For the 15 powers listed on this page decide whether it is a national, state, local or shared power. Check the appropriate column or columns.

National Power	State Power	Local Power	
_____	_____	_____	1. Marriage and divorce laws
_____	_____	_____	2. Administer welfare programs
_____	_____	_____	3. Approve constitutional amendments
_____	_____	_____	4. Raise and support armies
_____	_____	_____	5. Set property taxes
_____	_____	_____	6. Regulate interstate commerce
_____	_____	_____	7. Regulate nuclear power plants
_____	_____	_____	8. Coin money
_____	_____	_____	9. License incorporation of businesses
_____	_____	_____	10. Set zoning laws
_____	_____	_____	11. Environmental programs
_____	_____	_____	12. Lay tariffs on imports
_____	_____	_____	13. Admit new states to the union
_____	_____	_____	14. Establish courts
_____	_____	_____	15. License lawyers, doctors, barbers, plumbers and other trades and professions

Know Your State Government

EXECUTIVE

1. In most state governments the executive branch is headed by a governor and a lieutenant governor. Who holds these offices in your state?

2. Who is the attorney general and the secretary of state? Were they elected or appointed?

3. To which political parties do these four officials belong?

4. How long are their terms of office?

5. What are their powers and responsibilities?

LEGISLATIVE

6. Most state legislatures are bicameral, that is, they have two houses. In your state government, how many members are there in each?

7. To which party does the majority belong?

8. Who are your representatives? To which political party or parties do they belong?

9. What are the lengths of their terms?

10. Who is the leader in each house? (For example, in the U.S. Congress the leaders are the Speaker and the president pro tempore.)

11. Who are the party leaders in each house? (The majority and minority leaders.)

JUDICIAL

12. State judicial branches vary from state to state, but they all have different levels; e.g., trial courts, appellate courts, state supreme courts. How many levels exist in your state system? What are they called?

13. Are the justices elected or appointed? How long do they serve on the bench?

The Smokestack Federalist Papers

David Durenberger

Senator Durenberger (R-Minn.) is the chairman of the Senate Intergovernmental Relations Subcommittee, the subcommittee that is most directly concerned with issues of federalism. In this article, excerpted from a speech delivered to the Minnesota League of Cities, Senator Durenberger takes a moderate position in the debate over the relationship between the federal, state and local governments. As you read, compare his views with those of "Great Society federalists," who advocate a dominant federal government and with "Sagebrush federalists," who advocate a subordinate federal government. How might Senator Durenberger's opinion differ if he represented another state?

What kind of concept is "federalism?" I think we can agree that it is more than a single adjective to describe the multi-level structure of some governments including our own republic. The term "federalism" is, rather, a handy summation for a group of principles that serve to define the role of government in a society. Some of these principles were intended to limit the scope for government action to protect the liberty of the individual and cultural diversity in a large nation. Other federalist principles—principles like the Commerce Clause of the Constitution—are intended to extend the scope for governmental action to secure the advantages of a national union for the benefit of all citizens.

Like much of our Constitution, our concept of federalism seems to change as the problems confronting our nation change. When federalism is seen as a set of principles designed to both limit and extend the reach of government, this change can be viewed as a variation in emphasis among the principles. We are in such a period of change right now. President Reagan has made "federalism" a political issue and is acting on the belief that he has a mandate to emphasize the limiting principles of federalism that have been largely dormant over the last twenty years.

I agree that it is time to rethink federalism and to reform the instruments of intergovernmental relations. However, as I listen to the president and look at the future with both feet here in Minnesota, I begin to doubt the single-minded emphasis on the limiting principles of federalism. I am going to debate with the president. I am a member of his Federalism Advisory Committee. I will make sure he knows that the people of Minnesota expect more from the federal government than the security of a nuclear arsenal and the solvency of the Social Security Administration.

I am going to begin the debate by describing three theories of federalism. One I call "Great Society Federalism." It is the theory of the last twenty years. It is a federal grant for every purpose. It is a $94 billion transfer of federal funds to state and local governments. It is also 1,260 mandates—unfunded mandates—imposed by the Congress on governors and mayors as conditions of federal assistance. It is symptomatic of all that is wrong with the national government today.

The second theory, I call "Sagebrush Federalism." It is a compelling view of the future. It has made federalism an important political issue. It may make Republicans a majority party in the nation. The sagebrush federalists clearly have the upper hand.

The third view I call "Smokestack Federalism." It is not the platform of any political party. And it is not a demand that we keep all of the structure of "Great Society Federalism." In fact, it includes some radical reform. But it does see a role for the federal government in our future. It does place some emphasis on the "extending" rather than the "limiting" principles of federalism. It is my view and I think a Minnesota concept of federalism.

Devolving Federal Responsibility: The Sagebrush Federalist Goal

The hot item among sagebrush federalists these days is devolution. The president wants to devolve significant functions back to state and local governments and all of us can agree that the federal government is trying to do too much in too many areas.

"Great Society Federalism" has given us 550 separate grant-in-aid programs with state and local governments as recipients. The Carter budget for 1982 projected the cost of these 550 programs at $94 billion. We have 35 grants for highways, about 100 for health care, 40 or more for elementary and secondary education, 4 or 5 for energy conservation, a half-dozen for libraries, 7 for fire protection, several for waste water treatment in several different agencies, grants for mass transit, job training, housing, urban parks, the arts and humanities. The list is endless. State and local officials feel a duty to go to Washington on a shopping trip. And the shopping list is the Catalog of Federal Domestic Assistance. And if you can't get the grant...the next guy will...so you better get out and hustle—that's

Great Society Federalism.

So the sagebrush federalist proposes that we devolve significant functions to state and local governments. The president has already proposed elimination of 145 programs and cut the $94 billion down to $80 billion.

What the sagebrush federalist is not careful to recognize is that the $94 billion was 25 percent of the money spent by governors and mayors to conduct state and local government. And that the fever to cut and limit came to legislatures and city councils several years before it hit the Congress. Many governments are bound all around by limitations and restrictions that make it impossible to absorb the cuts quickly.

The sagebrush federalist promises that the national government will share its resources so that governors and mayors can pay for their new responsibilities. But the budget cutting process is coming in phases and we are not yet in the phase where we can afford to share. And the sagebrush federalist is likely to have his feet in a state where the legislature is choosing among proposals to spend the surplus rather than to raise the taxes.

Where does devolution begin? The attack on the federal government is also an attack on the federal income tax. The purest among the sagebrush federalists direct their most heartfelt efforts against those programs—particularly health, welfare and nutrition—that transfer income from one American to another.

And how does a smokestack federalist reply to the theory of devolution? The terminology is appropriate, although not exactly memorable. The smokestack federalist agrees that we ought to "decongest" the intergovernmental system, but argues that "decongestion" should be more than a simple decision to cut and run. To decongest you begin with where we are today, not where we were in 1950. You also do not assume that every function is best performed by local government and paid for with the property tax.

If the function is like education, transportation or law enforcement where the federal role is very minor and the state and local tax structure is appropriate to support the function, then in the interest of efficiency, economy and accountability the federal government ought to get out of the business entirely. If the function is like community development where the federal dollar is only treating the symptom of fiscal distress when the problem could be cured by restructuring local government, then the federal government ought to get out of the businesses, as well.

Decongestion is now a one-way street, however. Where the function is income security—preserving a safety net to provide minimum subsistence for all Americans—where the function is not place-oriented, but rather people-oriented, the federal government ought to take full financial responsibility and pay for the function with the federal income tax. We should not cap Medicaid. In fact, we should make it an entirely federal responsibility. By doing so and by coordinating Medicaid with Medicare, we might make some sense out of the American health care system.

The interesting thing about decongestion is that the swapping process—the sorting out that makes some functions wholly federal and at the same time turns some back completely to state and local governments—fulfills the commitment to provide the resources to pay for the devolved functions as part of the process. Making Medicaid a federal function would relieve the states of a $14 billion responsibility. That $14 billion could pay for the devolution of highway transportation, elementary and secondary [illegible] and community development.

With a strategy of devolution, the sagebrush federalist turns to the block grant as the principal instrument of this new revolution. The Great Society categorical grant is dead. It is probably kinder to say that the categorical grant has long since achieved its purpose. The categorical grant was designed to innovate, to demonstrate, to build the capacity of state and local governments to deal with the complexities of America in the mid-twentieth century. The great society federalism was successful in that respect.

Calling the Reagan proposals block grants is a misnomer. They are more revenue sharing than grant—more special revenue sharing than block grant. Generally, these proposals collapse several categoricals into a broad grouping, cut 25 percent from the total that Carter proposed for the individual categoricals and send checks to governors without strings. The most curious feature of these proposals is the mechanism used to allocate the pie among the governors. Basically, each state gets the same percentage of the smaller block grant pie than it got of the larger categorical pie in 1981. The decision to freeze the 1981 allocation—often reflecting the discretionary decision of a cabinet secretary—raises a second issue in the debate between sagebrush and smokestack federalists. The issue is allocation.

Allocating Federal Money to the States

Although Great Society Federalism was famous for the discretionary categorical with the complicated application procedures for competitive grants, the largest portion—two-thirds of the $94 billion—was actually allocated among the states by formula. Today, there are 146 formula grant programs using 500 different statistical factors to allocate $60 billion. The general revenue sharing formula is really two separate formulas—one three factor formula and one five factor form-

ula. The Treasury Department collects 200,000 bits of information to determine how much each of the 36,000 recipient governments shall receive.

But the classic example of formulas in Great Society Federalism is the low income energy assistance program. It started out in 1977 as a $100 million program with the allocation decisions completely left to the discretion of the Community Services Administration. In 1978 Congress specifically authorized the program at $200 million. With the onset of the fuel crisis in 1979, we increased the appropriation to $1.6 billion. And at that point it was too important to be left to discretion, so we added formula.

Southern Senators didn't feel they were getting their fair share from this formula weighted as it was for heating degree days. So for 1980 they proposed a different approach. A fight ensued with editorials all over Minnesota about the waste of federal funds on air conditioning in the South when people were freezing in northern climates. The Senate was almost deadlocked by the debate, but the fuel assistance program was saved by the Long-Boschwitz compromise. The program was authorized at twice the $1.6 billion necessary. Two formulas were included and states were entitled to the greater of the amounts under one or the other of the formulas. That is indeed Great Society Federalism.

So what is the sagebrush proposal? Well, the block grants effectively disguise the allocation issue. But block grants are only a transitional phase in sagebrush federalism. The final solution is to allow state and local governments to keep some portion of the federal taxes now paid by the citizens of those states and cities. Keep in mind that the sagebrush federalist does not like to use the income tax to transfer wealth from one American to another. Although no final proposal has been made, one suggestion mentioned by the president is that states get to keep some portion of the federal income tax. That certainly solves the allocation problem.

But what does that mean for Minnesota? On the surface it might appear to be a good bet. For every dollar in taxes we pay, we have traditionally realized much less than a dollar in federal spending. Keep the dollar and we won't lose the change. But that traditional pattern reflects the low level of defense spending in Minnesota. We rank 48th in defense spending. The feds will still take the defense dollar and spend it somewhere else—in the sagebrush states, I might add.

What it means is that the dollar you pay for decontrol of oil prices will stay in Texas or Alaska, instead of coming back through the federal government as a grant for energy conservation or fuel assistance. It means that the dollar you pay for royalties on outer continental shelf gas, will stay in Louisiana instead of coming back to Minnesota as a grant for urban parks. It means that the dollar you pay for royalties on coal will stay in Wyoming or Montana, instead of coming back to Minnesota as a grant for pollution control.

The decision to decontrol energy prices was and is a sound piece of national policy. It keeps American dollars in American hands. But viewed from the perspective of Minnesota, we are now paying $3 to Texans to keep $2 from OPEC.

Decontrol is a decision to let a cartel set prices for energy. Decontrol will result in the transfer of $1 trillion from energy consumers to energy producers over the next decade. Producer states will take $124 billion of that amount—and four states get 30 percent of that total—in royalties, severance and income taxes. The producer states will effectively export at the cost of state and local government through severance taxes paid by consumers in other states. Without taxes on wealth and income located in the state, they will also compete for our businesses and jobs. The sagebrush federalist would be delighted to add to this bounty by keeping a portion of the federal taxes paid on energy dollars. It's a rich get richer scheme.

And how does a smokestack federalist respond to this scheme? Do you know that our basic smokestack industries, auto, steel, rail, electric power don't pay any federal taxes because they don't make any profits? Would you like a percentage of that? Would you like a cut of the income taxes that Minnesota farmers pay if interest rates stay at 20 percent and energy prices spiral upward again? Would you like a percentage of the tax paid by an unemployed factory worker whose company relocated to Texas because it has a better business climate—better because it is paid for with your energy dollar?

Earlier when I was suggesting that within the concept of federalism there are principles which argue for extension of government—for activism by government—I could see all my Republican friends in the audience squirm in their seats—thinking "there goes Durenberger swimming upstream again." Let me apply some specifics to the activism I have in mind.

The Commerce Clause of the Constitution is most certainly one of our federalist principles. It says that the federal government shall regulate interstate commerce. It gives congress the power to prevent undue burden on interstate commerce that might be imposed by a state. In fact, the Commerce Clause was the principal reason that the founding fathers gathered in Philadelphia to write a constitution, because there wasn't enough federalism in the Articles of Confederation. States were hampering interstate commerce with tariffs, duties and taxes.

Well, I'd be willing to ride a horse right back to Philadelphia with the president to show him that

federalism means that the federal government should use its powers to correct the fiscal disparities that are caused by the energy crisis. I have a bill to limit Montana's 30 percent severance tax on coal. The administration opposes it. There is a court case charging Montana with unconstitutional interference in interstate commerce. The administration filed a brief on behalf of Montana, arguing that a limitation would be an intrusive national government act which violates our concept of federalism. Sagebrush federalism perhaps, but not the kind of federalism I see in the Constitution.

Enforcing the Commerce Clause is a structural solution to the energy disparities. But I would advocate some fiscal activism, as well. The Congress did not pass the $227 billion windfall profits tax so that we could leave a percentage of it in the states where it is generated. We didn't spend months on the tax, so that we could spread it evenly or pay off the national debt. We intended, and the smokestack federalist should insist, that the money be returned to the energy consumer in a way that makes that consumer less dependent on high-priced imported—whether from Saudi Arabia or Texas—fossil fuels. That takes subsidies for near-term energy technologies...abolished in the Reagan budget. That takes weatherization for the cold climate states...abolished in the Reagan budget. That takes general, equalizing fiscal assistance to the states and cities left cold by the energy transformation.

You get my drift. I want desperately to tell this president that he cannot ignore the allocation issue in the New Federalism. He cannot—although his budget director is trying—pretend that federal decisions are neutral with respect to regions or states or cities. He cannot ignore the fact that some states and cities have not the fiscal capacity to pick up the functions he would devolve. And they don't have the capacity even though their tax effort is extraordinary. They don't have the capacity because other federal government decisions—decisions like decontrol, however correct from a national perspective—are causing a transformation that is shifting the places of wealth away from the places of need.

There are many other ways that I could contrast the sagebrush and smokestack federalists—the management of public lands, water projects, the difference between block grants and special revenue sharing, how we solve the problem of federal mandates on state and local governments, the role of state government in the intergovernmental system. There isn't time for all of that now. But I would like to touch on one more issue.

Apply Regulations Nationwide

The sagebrush federalist generally has a passion for eliminating the regulations of cabinet departments and federal agencies. One of the issues not often examined from federalist perspective was the inclination of great society lawmakers to use an intergovernmental system for major regulatory programs. The Clean Air Act, OSHA, Surface Mining Reclamation, Emergency Energy Conservation, and many others all create a federal agency to set standards and require states to write plans to achieve those goals. "Too intrusive," says the sagebrush federalist. And their first target will be the Clean Air Act with proposals to return the standard setting responsibility to the states.

Smokestack federalism was not a loosely chosen term. When you have the smokestacks, if you care about your health and your environment, you choose to keep the standards. Does anyone in this room doubt that if given responsibility for Clean Air Act standards, the State of Minnesota would choose to keep or strengthen the standards set by EPA over the last few years? But don't you also know that other states given the option would gut the standards? And what could we expect next? That they would come to our industries on a recruiting misssion to suggest relocation because, after all, their business climate is better. "Not only are taxes lower, not only is energy more plentiful, but there aren't any of those pollution regulations to put up with." I can hear them already.

What's the federal role in environmental regulation to set the standards uniformly across the nation. So that states will not use the standards as another stage for competition over commerce. And what's more degrade the environment that we give to our children.

You see the contrast. I want to conclude by softening my comments somewhat. I really do not attribute all that I have described as sagebrush federalism to our president. Nor would I ever expect the pure sagebrush or the pure smokestack version of federalism to become the sole principles by which we decide what is an appropriate role for the government. I think I can get to this president. I know he can understand and appreciate the views I have expressed. And I feel in my heart that his heart is big enough to feel the problems I have described. But what I hope I have done is warm you up. We are in a struggle. If our future is anything like sagebrush federalism, we are in trouble. Do not let this debate pass you buy.

We have stepped into a new era. For the first time in a long time we will examine the basic concepts of our government. And we must not be too shy to reach out beyond states' rights for what's right...for all of our states and cities.

Federalism: What Kind Will Work?

Point/Counterpoint

In his 1982 State of the Union message, President Reagan proposed a major resorting of government, in which responsibilities and funding for welfare programs would be transferred to the states while the federal government would assume the state share of responsbility for managing and funding Medicare and Medicaid health care programs. The president argued that the role of the federal government should be limited to nationwide concerns and that states and local communities should administer programs that directly affect them. His proposal, which he called "the New Federalism," set off a complicated political debate.

Below, Richard S. Williamson, special assistant to the president for intergovernmental affairs and chief author of the New Federalism proposal, discusses federalism from the Reagan administration's point of view. Williamson's article appeared in the Washington Post *on February 24, 1982.*

Then, Tom Wicker, the New York Times *columnist, challenges the administration's assumption that decentralizing the government is what the country needs. Wicker's article appeared in the February 2, 1982,* New York Times.

Fat Government Has to Go

By Richard S. Williamson

On the problem there is little disagreement. The federal government has become bloated and inefficient. Programs overlap and are so numerous that the average citizen can't begin to name a small fraction of them, much less tell you what they do. Federal program administrators are so removed from the people that citizens don't know whom to blame when government services go sour.

Yet political elitists here in Washington adamantly maintain that the federal government is the only entity big enough and sophisticated enough to deliver services to the people. They call for more of the same.

It is reminiscent of the response by the owner of a chain of large retail stores to his cost accountant. When informed that, on average, the stores were losing 35 cents on every item sold, the owner said, "Yes, but we make it up in volume."

Should we defend the status quo of a big, centralized federal government that costs too much and produces too little? Or should we show progress, change and new solutions by moving forward and returning programs and resources to the people?

President Reagan's federalism initiative provides an historic window of opportunity to elected officials at all levels of government. Unlike many of his recent predecessors, the president is saying to state and local officials, as well as to Congress, that he trusts them as full and equal partners in our intergovernmental system.

During the next few weeks and months there will be much meaningful discussion about the details of the president's proposal—for example, how the fiscal disparities issue will be addressed; whether funding sources for the trust fund must be adjusted; how the pass-through mechanism to local governments should be constructed.

These are important issues, but they fail to get to the nub of the debate on the philosophy behind the president's initiative.

The issue is rather simple and relates to our fundamental assumptions regarding the meaning of democracy. The philosophical opponents of the president's initiative honestly believe that the farther representatives are from people they serve, the better democracy will function. Ronald Reagan rejects that view. He believes that democracy depends on government's being close to the people.

The special interest groups that for so long have fed off the present federal system don't want the public policymaking arena shifted closer to the people. They have benefited from the gravitation of power to Washington and have annointed themselves with an importance not earned through the respect of the people.

President Reagan rejects this tired, wrong-headed advice.

He believes the people have the right to make decisions about their everyday lives for themselves. And, most of all, he has an admiring trust of the state and local representatives of the people for their caring and compassion. It is a trust he acquired during eight years as governor of California.

This does not mean the administration thinks every state and every city will make a right decision on every issue. They will serve as laboratories of democracy, and in any laboratory not all experiments work. But a mistake at the state and local level confines the damage;

a mistake at the federal level blows up the whole plant.

Who will benefit from enactment of the president's federalism package? Certainly state and local elected officials, who will be given more authority, responsibility and financial resources to represent the people they were elected to serve. Certainly the Congress, which will once again have an opportunity to focus on truly national issues rather than on potholes and other local concerns. And certainly the taxpayers, who foot the bill for government, and will now have a far better opportunity to hold government officials accountable for the decisions they make.

The only real losers will be the special interest groups and bureaucratic middlemen—the grantsmen—who siphon off funds from those in greatest need.

To those elitists who believe that somehow Washington has a corner on wisdom and compassion in this country, there is nothing President Reagan or those who serve him can write or say that will change their minds, but that is where the intellectual and political battle will be joined.

None of us in this administration has any misconceptions that the president's federalism proposal is a magic panacea. But we are convinced it will help make government work again. It will cut administrative overhead and define precise product lines by sorting out responsibilities among the various levels of government. The president wants to make up in quality what has been squandered in volume.

The New States' Rights

By Tom Wicker

President Reagan proposes to make the states responsible by 1988 for welfare, food stamps and more than 40 other federal programs—so responsible, in fact, that the states will be able to kill any or all of these programs, beginning in 1984, if any or all of the states decide to. And some probably will.

Can this be a serious proposal from the president of all the people? Does Mr. Reagan really intend for some states to be able to offer their needy citizens *no* help? Does he actually believe the national government should provide *no* incentive and make *no* requirement of the states regarding help for the needy?

That's exactly what Mr. Reagan intends, if his own words are taken at face value. First, his proposal that the federal government assume all Medicaid costs now borne by the states would provide them with less than half what they'll need to finance the growing costs of the 40-odd programs he wants to transfer to them.

Second, the transition-period trust fund that supposedly would pay the rest of the added state costs—ranging from $23 to $27 billion annually from 1984 through 1987—would be financed by federal excise taxes. But wait: "To the extent," said Reagan in his State of the Union Message, that the states "choose to forgo the federal grant programs, they can use their trust fund money on their own, for those *or other purposes*" (italics added).

Translated, that means that if during the brief life of the trust fund some states want to drop food stamps, they can, and without a peep of protest from anybody but the hungry. And, of course, just what those "other purposes" might be, Mr. Reagan didn't specify. Highway construction? Tax reduction?

The trust fund, however, will go out of existence in 1988; then, said the president, the excise taxes that provided it with $28 billion a year "will be turned over to the states" to finance the programs. The states "can then preserve, lower or raise taxes on their own and fund and manage these programs as they see fit."

Mr. Reagan may not be old enough to remember hearing President Washington's first State of the Union Message in 1790; but he's old enough to remember that when President Eisenhower, in the 1950's, offered the states the opportunity to take over a portion of the telephone excise tax, there were virtually no takers. The reason is simple and political—if Congress *lowers* taxes by killing the federal excises on, say, whisky or gasoline, state legislatures are naturally reluctant to *raise* taxes by reinstating the same excises, particularly if some other states don't do it.

That's not the only thing Mr. Reagan has either forgotten or put out of his mind in proposing this new states' rights scheme. He did not acknowledge, for example, the historical fact that the federal government got into what was then called "relief" in the 1930's because the states and the private sector couldn't or wouldn't take necessary responsibility for the poor, the aged and the helpless. They will no doubt do better now; but how much better? Is welfare all that much more popular today?

Reagan has forgotten, too, the fact that even now there are wide disparities among the states in what they're willing to do for the needy, going far beyond cost-of-living differentials and not always reflecting differences in resources. The result is that poor people are worse off in many states than in others, even under the present system.

But Reagan wants to take away the federal welfare payments that now provide at least a minimum national standard *and* eliminate the federal requirement for at least some welfare assistance everywhere *and* make the states responsible for raising taxes to pay for welfare and other assistance programs. The consequences are hardly in doubt: Some states will reduce welfare and

food stamps below present levels, and other states will eliminate these programs altogether.

That will not only produce an unfair, "un-national" and indefensible crazy quilt of 50—or probably fewer—different welfare programs; it will mean a new tide of immigration by poor people from the ungenerous states and the resource-poor states into those few that can or will tax their citizens to aid the needy. People will "vote with their feet," in Mr. Reagan's own phrase, thus saddling only some of the states with what ought to be the national burden of all the states and the federal government.

No doubt some federal programs can be handled more effectively by the states, and some "swap" of functions might well be in order. But assistance to the needy is primarily a national responsibility, owing to the effect of the national economy on the cost of such assistance.

The current recession, for example, increases the need for food stamps and welfare while reducing tax revenues to pay for them. That will not change if the states assume these programs; but it's Washington, not the states, that has responsibility for the national economy. And these national responsibilities cannot responsibly be separated.

Go West - TREMENDOUS SCENERY, RESORTS, SPACE AND AVIATION INDUSTRIES, LOTS OF LAND, GREAT COLLEGES, PRO SPORTS.
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America on the move: but which way?

Know Your Local Government

The local level of government is the one closest to you. Its structure and the activities carried out by local officials affect you every day. Local governments include counties, municipalities, townships and districts such as schools, fire and police. In this activity you will be asked to find out about some aspect of your local government, how it affects your life and how you can influence local policies and activities.

Here is a partial list of local issues and activities.

A. Public transportation
B. Garbage disposal
C. Social services to the handicapped, poor and unemployed
D. Schools
E. Fire
F. Police
G. Road maintenance
H. Zoning
I. Water treatment

1. What activities conducted at the local level can you add to this list?

2. Pick any one local activity and find out about its administration. Answer the following questions. You may wish to interview local officials and/or obtain material from your local government about the activity you have selected.

a. What is the local activity you have selected?
b. What aspect (city, county, township, etc.) of local government is responsible for providing the service?
c. Where do they obtain funds to carry out the activity?
d. Who are the people responsible for administering the office or agency? What are their titles?
e. Are they elected, appointed and/or hired?
f. How are you affected by the existence of this activity and/or service?
g. Are there any changes you would like to see made? What could you and others do to bring about these changes in the local activity or service?

Building America's Highways: A Shared Responsibility

Roads crisscross America everywhere, forming a network of highways and streets nearly four million miles long. Americans travel more miles on the road than any other people. Highways are a national lifeline, essential to business, education, recreation, and many other pursuits of the American people. Highways are among the most critical domestic responsibilities of government. All levels of government play some role in planning, building, or maintaining this great national resource.

The American highway network is an excellent example of the federal system in action. The federal system, as established in the U.S. Constitution, divides responsibilities for governing the nation between the national (or federal) government, the fifty states, and thousands of local governments, each of which is legally supreme in its own sphere. By means of the Constitution, the thirteen original states created a nation, giving certain powers to the national government and keeping other powers for themselves. The states compromised to obtain national unity while retaining their own diversity. The Constitution does not divide responsibilities equally or precisely; instead it sets the general terms for assigning different functions to different levels of government. Federal, state, and local governments share many areas of responsibility.

The national highway network illustrates this pattern of shared responsibility. The Constitution defines a national obligation for highways through provisions empowering Congress to "establish post roads," "provide for the common defense," "regulate commerce," and "promote the general welfare." At the same time, the states have an interest in constructing highways to support social and economic ties between their towns and cities. Local communities also maintain roads and streets to serve the needs of their residents. Each level of government thus shares with the others a responsibility for roads and highways. The interests of each level define their participation in the highway network.

Federalism does not result in a rigid, unchanging set of relationships. Instead it leads to a process where responsibilities are continuously sorted out, assumed first by one unit of government, then by another. Like other programs under the federal system, highway responsibilities have undergone massive changes over the years. Yet the national highway system remains one of the longest-established activities organized on the basis of federalism. The American highway network illustrates both the division of responsibilities and the interdependence of governments united in the federal system.

This case study will look at the background, operations, and current condition of the highway system. It will consider several questions relating to highways and federalism:

- Why does the national government have an interest in highways?
- What are the national, state, and local responsibilities for highways?
- How have highway responsibilities changed at different levels in the federal system?
- How effective is the federal system in sorting out responsibilities for highway construction and maintenance?

Background: Government and Highways

Promoting and building roads is an ancient government interest. Early civilizations were known for their roads; the Roman Empire built superb roads. Under English law, local governments held primary responsibility for maintaining roadways, and this legal tradition carried over to America. But under the Constitution, the federal government also had an interest in highways. National highways began with direct federal subsidies of $7 million to construct the Cumberland Road, or National Pike, between 1806 and 1841, from Cumberland, Maryland, to Vandalia, Illinois. Government leaders insisted that there was a national interest in connecting the East and the West. Federal land grants to states also supported road construction.

Much experimentation took place in early American transportation. Waterways, rather than roads, were the most important links between states and cities. Private firms built turnpikes, while the federal and state governments invested heavily in canals. However, by the mid-nineteenth century, railroads and river traffic dominated the transportation network. Federal land grants helped build railroads, but most investments in transportation came from state governments and private firms. It was not until the twentieth century that federal and state governments arranged a systematic division of labor in constructing transportation facilities.

In the late nineteenth century, a "good roads" movement emerged when three major groups began a campaign to further road development in the United States. Railroad users wanted improved rural roads to move goods locally from production points to railroad depots. Farmers' organizations campaigned for better access to markets and railroads, and bicyclists fought for better roads for touring cities where bicycling was a popular hobby. After 1900, these groups were joined by organizations of automobile enthusiasts such as the American Automobile Association. Each group had a specific interest in road improvement, and their combined force proved to be powerful enough to stimulate change. Together, these four interest groups formed the original highway lobby.

In many states, the good roads movement led to the establishment of state highway departments and more systematic road management. A few states even created state-aid highway programs, donating funds for roads to local authorities. Early state systems set an example for the federal government, which in the 1890s began cooperating with state and local highway agencies, representing federalism at its most decentralized and experimental stage. Getting America "out of the mud" inspired increasing activity and communication among all levels.

Meanwhile, a new federal program reinforced the national interest in improved roads. In the 1890s, the Post Office Department began experimenting with rural mail delivery systems. Rural free delivery (RFD) quickly became popular, spreading throughout the country until thousands of miles of RFD routes existed. Depending on all-weather roads for its success, rural delivery increased pressure on the federal government to improve post roads. In 1912, Congress passed legislation offering $500,000 in federal aid to construct experimental post roads. This cumbersome measure—providing funds to state and county governments—accomplished little.

The good roads movement improved greatly in 1914 with the organization of the American Association of State Highway Officials (AASHO). Engineers and administrators constituted the association, and their interests, based on their respective professions, were clear. Their common goals included raising technical standards of highway design, advancing state highway programs, and securing federal commitment to support state highways. By 1915, the highway lobby could argue that the federal government had several responsibilities to road building. The postal system, a federal service, needed improved roads. Rural commerce, especially farm-to-market trade, required better highways. And the rapidly growing population of automobile owners demanded highways for interstate travel and tourism.

Developing the Federal-Aid Program

Shortly after its formation, the American Association of State Highway and Transportation Officials began working with members of Congress to develop federal-aid highway legislation. One alternative, rejected by the legislature, was to have a federal agency, such as the Army Corps of Engineers, construct a federal system to be owned and maintained by the national government. Instead, Congress passed the Federal-Aid Road Act of 1916, which has since provided the basis for all national highway aid.

This legislation strongly asserted the principles of federalism, supporting federal-state cooperation through a major national program. After years of experimentation and pressure from the states, Congress authorized grants to the states totaling $75 million over a five-year period for rural post roads. A fifty-fifty matching fund requiring one state dollar for each federal one, supported highway projects. States would initiate and administer projects and own and maintain the finished highways. The bill required states to establish professional highway departments to manage the program. Although the 1916 legislation provided the states with incentives to upgrade their roads—a goal of the engineers—it failed to promote federal interest in a highway network running between the states. As a result, states were free to improve highways at random, and often these roads simply ended at state lines in mudholes or open fields, proving that states were not working together.

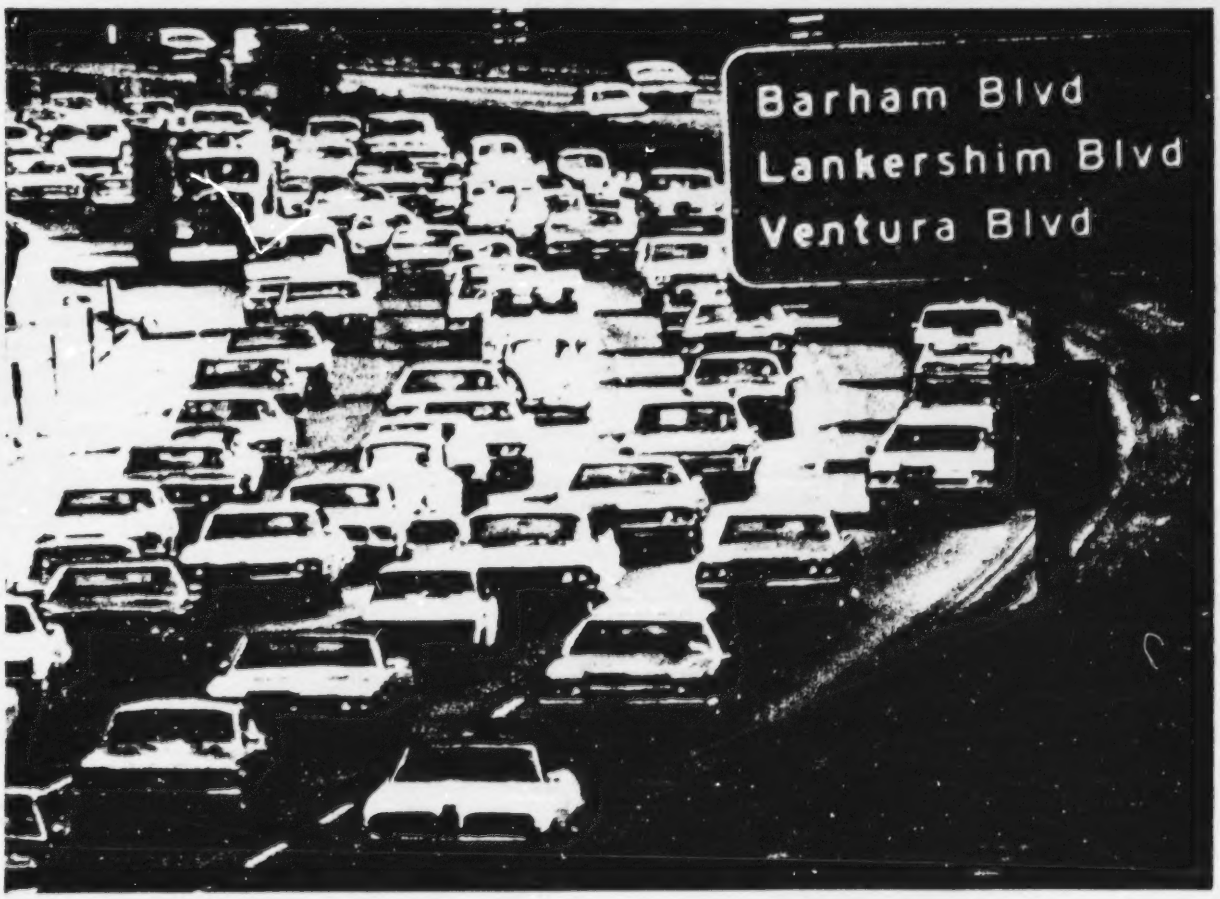
In 1921, Congress attempted to remedy the defects in the first federal-aid highway act and make the federal-state partnership permanent. The Federal-Aid Highway Act of 1921 authorized $75 million in grants to the states with a fifty-fifty matching fund for "such projects as will expedite the completion of an adequate and connected system of highways, interstate in character." The law required states to designate highway systems for improvement rather than simply choosing projects at will. A portion of these systems had to connect with other states' systems. Consequently, Congress asserted the federal interest in promoting national, interconnected highways. The act of 1921 also penalized states for not maintaining federal-aid highways. Basic principles of federal-state cooperation in highway programs established by the acts of 1916 and 1921 continue today.

During the 1920s, the highway network was organized. For example, state and federal officials agreed on uniform route markings, assigning even numbers to highways running east and west and odd numbers to north-south routes. By 1929, every state had a tax on motor fuel, between two and six cents per gallon, to support highways. Highway users thus paid for constructing and maintaining the highway system when they purchased fuel. The federal government also instituted a fuel tax, but its revenues were not assigned directly to highways. Meanwhile, highway problems became more acute. Americans had fallen in love with the automobile. By the late 1920s, more than 23 million motor vehicles were registered. Even the Great Depression of the 1930s did not stop auto production. In 1940, auto registrations numbered 27.4 million, and 4.8 million trucks were registered.

Two basic principles had become firmly established by this time. First, the highway system was to be financed primarily through user fees—state and federal taxes on vehicles and fuel. Second, the system was to be federal in nature—a collaboration between the national, state, and local governments. The federal government set basic standards and paid half the costs of the national highway system. State and local governments actually built, maintained, and owned highways. Federalism provided more equity to the highway system than state funding alone could. It helped equalize road conditions among rich and poor states by distributing federal dollars to all according to need. Federal aid also acted as an incentive to the states to build interconnected roads by matching state investments. However, once highways were finished, states had to finance their maintenance.

National versus State Planning

During the 1930s, state and national highway officials and lobbyists agreed on the need for massive expansion of the nation's highway system. However, they did not agree on how to plan and pay for the system, and their disputes put severe strains on federalism. Costs of a national system promised to



Many urban area superhighways, like this one near Ventura, California, are overcrowded. Local and state leaders want more federal help to expand and repair existing highways.

be tremendous. With inadequate funds to modernize highways, some officials seriously proposed national toll superhighways. Federal highway officials rejected this idea in favor of a national network to be financed in the traditional way—federal and state governments sharing the costs. Discouraged by the lack of funds and endless delays, Pennsylvania and Connecticut built toll superhighways in the late 1930s.

Highway planning conflicts between the federal and state governments intensified. Some roads were still engineered at local levels in the 1930s, but in most places state officials dominated the planning process. Local, state, and national highway planners clashed—and still clash—over basic goals in highway planning. Local officials wanted roads that met local needs for enhancing business interests, promoting real estate development, and serving commuters, but which didn't always speed traffic. Responding to motorists and highway construction interests, state officials wanted highways to enhance communication within states yet economize on precious state funds.

Federal officials thought in terms of a national highway system, national defense, and the economic impact of highways as means of creating jobs, supporting industry, and aiding agriculture. These goals were overlapping but often inconsistent. For example, highway designers disagreed about access. Some wanted totally free access for any streets and driveways on all roads. Opening roads to free access made them more hazardous and impeded traffic flow, as on commercial strips. Limited and controlled access highways became more popular with engineers and drivers alike because they improved safety and accelerated vehicle flow. Federal highway engineers saw the virtues of limited access sooner than did local officials due to their different concerns.

Toward a New Era for Highways

Highway building nearly halted during World War II, giving national and state agencies an opportunity to outline directions for postwar highway programs. National highway planners wanted a coordinated plan that supported national defense requirements. State highway officials wanted large increases in federal funds available to the states, with more money allocated to urban and secondary roads. The states also wanted to increase the fifty-fifty federal matching fund to 75 percent. Local governments proposed a new Rural Local Roads Administration to give priority to subsidizing county roads. Finally, with conflicting pressure from all levels of government, Congress passed the Federal-Aid Highway Act of 1944. The new law authorized $500 million in federal grants to the states for three years, more than any previous bill. The 1944 act also authorized a forty-thousand-mile National System of Interstate Highways but allocated no funds for its construction.

Following the war's end in 1945, various interest groups jockeyed for influence in road building. Each group—for example, truckers, farm lobbyists, and state engineers—tried to get federal funds for roads especially useful to their needs. At the same time, new car and truck registrations soared by the millions, crowding highways even more and hastening their deterioration. Rush-hour traffic jams became commonplace in every city, and the accident rate rose alarmingly. Adding to states' financial problems, better-designed, wider highways were more costly to build than earlier routes. Several states passed laws or constitutional amendments preventing fuel tax revenues from being used for any purpose except highways.

During the early 1950s, several efforts were made to answer the need for a new highway program. States as diverse as Maine, New York, Indiana, and Oklahoma constructed toll expressways. By the 1960s, twenty-one states had instituted tollways as a way to improve highways quickly without raising taxes. However, the idea of basing an entire federal system on toll financing contradicted long-standing assumptions, and highway interests looked for other solutions.

In 1954, President Dwight D. Eisenhower directed his administration to encourage the interstate highway system. His officials came up with several plans to revive state-federal cooperation and introduce new financial incentives. One proposal, to form a new Federal Highway Corporation, advocated centralizing highway authority in federal hands more than any previous federal-aid laws.

The Interstate System

After failing for years to achieve a compromise, the House of Representatives succeeded in passing one of the most important federal highway laws ever written, the Federal-Aid Highway Act of 1956. The law provided something for everyone, authorizing a large separate sum of money to build the National System of Interstate and Defense Highways. The most innovative feature of this legislation was the establishment of the Highway Trust Fund, combining revenues from taxes on fuel, tires, and other vehicle sources, and reserving the fund for road building

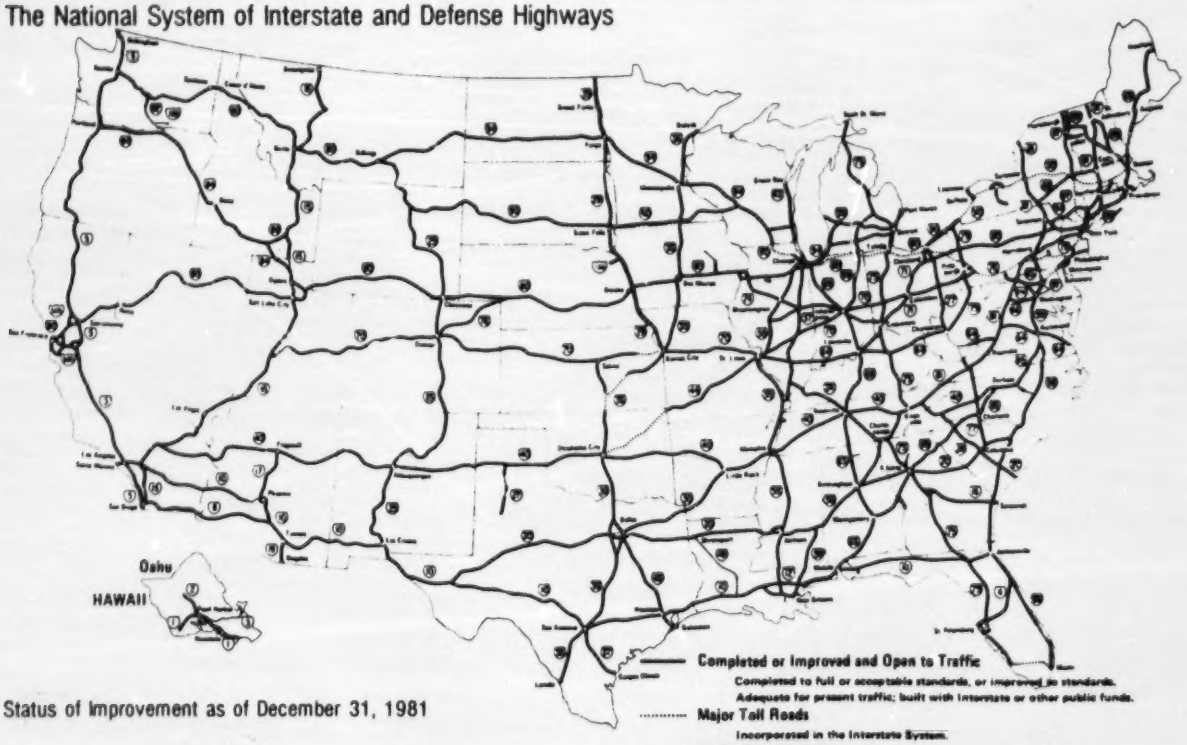
alone. The highway fund provides pay-as-you-go financing for highways without additionally draining the trust fund's treasury. A 90 percent federal contribution to construct the interstate system also resolved the financial bind on the states. The law gave federal authorities more control over standards for interstate highway design. In general, however, the act retained the traditional patterns of state-federal cooperation and division of labor for highway building.

The National System of Interstate and Defense Highways represented one of the most massive public works projects in the history of the world. The plan called for a system of 41,000 miles, later increased to 42,944 miles, connecting most American cities of over fifty-thousand people. Basic authority for planning and construction remained state responsibilities. Most states required lengthy lead times to locate and acquire rights-of-way, to engineer and design highways, and to complete construction. Although the system was originally scheduled for completion in 1972, delays and complications extended construction far beyond initial estimates. The national highway system is currently 96 percent complete. The Department of Transportation estimates that it will be finished in 1992.

Receiving a federal subsidy of 90 percent gave states a powerful motive to build their parts of the system. Independent of their actual transportation needs, states expanded their participation to generate construction jobs and additional retail and other economic activity and, ultimately, to increase state tax revenues. As a result, the interstate program provides significant state and local economic returns, apart from the value of the roads. Indirect benefits include commercial and industrial growth at major interchanges and encouragement of tourism.

New revenue from fuel taxes supported federal highway appropriations, scheduled to expand through the Highway Trust Fund. Federal gasoline taxes increased from two to three cents a gallon in 1956, then to four cents in 1959. The tax increase on automobile equipment and trucks, in addition to increasing travel and fuel consumption in the 1950s and 1960s, added even more money to fuel reserves.

The National System of Interstate and Defense Highways


Oahu
HAWAII
Completed or Improved and Open to Traffic
Completed to full or acceptable standards, or improved to standards adequate for present traffic; built with Interstate or other public funds.
Major Toll Roads
Incorporated in the Interstate System.
Under Construction
Preliminary Status or Not Yet in Progress
Plan preparation and right-of-way acquisition completed or underway on many portions of these sections.

Status of Improvement as of December 31, 1981

Scale of map does not permit showing of status in urban areas and for very short sections.

SOURCE: Department of Transportation, Federal Highway Administration.

More so than earlier federal-aid highway programs, the interstate system calls for uniform design standards, developed cooperatively by federal and state highway officials. These standards include control of access throughout the system; minimum lane, shoulder, and median widths; and no railroad crossings at highway intersections. Interstates are designed for comparatively rapid speeds depending on the terrain, with appropriate gradients, curvatures, separated traffic lanes, and minimum standards for bridges. However, the interstates do not demand uniform structural engineering. States may choose their own building materials and other structural elements as long as these are adequate for traffic loads. In engineering as in financing, the system relies on collaboration between state and federal authorities. Other features, such as signage and numbering, result from agreements between federal and state officials.

Construction of the interstate system progressed rapidly during the 1960s, but funding problems arose as states pushed to complete more expensive, controversial urban highways. Despite obstacles, over forty-thousand miles of superhighways were open to traffic in 1981. The Congressional Budget Office summarized the results of the system:

> In its 25 years of existence, the Interstate Highway System has assumed enormous importance within the nation's transportation system. Interstate routes carry 19 percent of the nation's auto travel and an estimated 32 percent of the nation's truck traffic. The Interstate System has reshaped where Americans live, work, shop, and vacation. It has been a major factor in the growth of suburbia, with its attendant shift in populations and the services they require.

Millions of Americans enjoy the results of this massive expenditure of federal and state funds. Motorists may travel hundreds of miles on broad, sweeping highways without traffic intersections, stoplights, or other obstacles. Economically and socially, the interstate system contributes to growth and change throughout the nation.

Attacks on the Interstate System

Most Americans supported interstate highways with enthusiasm. However, as the interstate system grew, people became aware of unexpected, unfavorable consequences. Increasing attacks on the system came from transit advocates, environmentalists, and others. Critics claimed that, with the incentive of 90 percent federal financing, interstates reinforced the bias of U.S. transportation policy toward highways.

Interstate highways unbalanced the national transportation network and intensified commuting problems by making mass transit less economical. Investments in efficient rail passenger and freight systems fell off because of the advantages new highways gave motor vehicle drivers. Beginning in 1973, federal highway legislation provided aid to states and cities for mass transit. Since then, other federal assistance for construction, capital improvements, and operating expenses of urban transit systems has helped balance national transportation policies.

Other criticism of the interstate system concerns its impact on the environment. Environmentalists oppose highways because of resultant air and noise pollution, destruction of the natural landscape, and interference with natural processes. Highways consume enormous amounts of space, destroy historic sites and environments, and take over scarce urban parks. The severe social impacts of urban freeways have also been criticized. Although highways enhance mobility, they contribute to urban sprawl, they disrupt city neighborhoods, and they disperse people and city services. Instead of concentrations of people, cities have become concentrations of moving and parked vehicles. Critics argue that highway officials at all levels are insensitive to any interests except those of traffic.

Administering Federal-Aid Highways

The federal-aid highway program operates through the distribution of federal funds to the states to construct and improve rural and urban highway systems. The Federal Highway Administration, an agency of the U.S. Department of Transportation, administers the program.

Four basic federal-aid systems serve the national interest by creating a network of interconnected highways. The largest portion of federal assistance—more than 70 percent of federal highway funds—goes for construction, reconstruction, and improvement of interstate, primary, secondary, and urban systems. The Interstate program consumes more than 40 percent of authorized funds, nearly $6 billion in fiscal year 1983.

Primary, secondary, and urban highway systems represent the largest mileage of federal-aid highways. Most primary highways are U.S.-numbered and major state-numbered routes connecting important cities and towns and carrying high volumes of traffic. The primary system includes about 300,000 miles of two- and four-lane highways. Secondary routes in rural areas are used relatively less but serve to feed traffic into the primary system. Some 400,000 miles of secondary routes include lesser state highways and important county roads. The urban system, con-

sisting of about 113,000 miles, embraces important urban arterial and feeder routes not on the primary system. These three systems are eligible for 75 percent federal subsidies. In addition to these systems, the bridge replacement and rehabilitation program provides a federal subsidy of 80 percent to renew highway bridges in the United States.

The process of highway aid begins when Congress authorizes federal funds for highway construction. Funds are distributed to the states according to certain criteria that consider, for example, a state's population, area, and mileage of rural delivery and intercity mail routes. States receive contract authority a year in advance of their projects so they may plan their highway programs and provide matching funds. Construction costs are paid with state funds, then the Federal Highway Administration reimburses the states.

Each state plans and develops its own highway projects. State highway agencies study existing roads and traffic, predict future travel patterns, then develop highway designs. If federal funds are to be used, the Federal Highway Administration must review and approve projects at key stages in their development. State highway agencies award contracts and supervise construction, then, after projects are completed, maintain the facilities at state expense.

Stages of the Highway Crisis

- The first Arab oil embargo, 1973-74, results in a severe energy shortage, long lines at gasoline stations, and rising fuel prices.
- Fifty-five-mile-per-hour speed limits and other conservation measures are introduced.
- Americans buy more small, energy-efficient automobiles.
- Energy-related costs rise rapidly, for example, the cost of oil increased from $2 per barrel of oil in 1973 to $30 per barrel in 1980.
- User-fee revenues collected by the states and federal government level off.
- The interstate and other highway systems show signs of aging and wear. Pavements and structures on these systems deteriorate.
- A second serious energy crisis in 1979 brings back gasoline lines.
- Highway construction and improvement costs increase 50 percent more rapidly than the general inflation rate.
- The gap between dollar needs and revenue for highways expands in the early 1980s.

The fundamental basis of federal-state relations in highway construction is a system of shared responsibilities and collaboration. States take the initiative while federal authorities administer and allocate funds and see that projects are soundly engineered and constructed in accordance with the law. The result, in the words of one leader in the highway program, is a "unique federal-state partnership developed over the years to construct and maintain our Federal-Aid highway system..."

In addition to aid for highway construction, the federal government offers assistance to state highway safety programs, introduced in the Highway Safety Act of 1966. Programs supported by this legislation provide incentives and grants to the states to improve existing safety activities and develop new safety projects. Such activities have included identification of particular highway hazards, intensive enforcement of traffic laws, identification of problem drivers, campaigns against drinking drivers, and efforts to promote use of seat belts and protective helmets. State programs are funded and administered by the National Highway Traffic Safety Administration, U.S. Department of Transportation. These federal-aid programs have been credited with saving thousands of lives.

One other federal-aid safety program has been a lifesaver. In 1973, the Department of Transportation began granting money to the states for installing automatic warning devices at thirty-thousand railroad crossings. By 1981, approximately twelve thousand railroad crossings were newly protected. Although some budget authorities consider federal safety funds and regulations to be excessive, Congress defends such programs as sound examples of federalism.

A New Highway Crisis

After 1974, a new series of problems forced the national government and the states to reexamine their commitment to the interstate highway system. Successive petroleum shortages raised questions about the nation's heavy dependence on highways and motor vehicles. A financial crisis overtook the Highway Trust Fund because of drastic increases in costs and declines in revenues. And physical deterioration of highways interfered with travel on thousands of miles of the interstate system and other roads. These problems are all closely related.

Fuel shortages in 1973-74 and 1979 resulted in a national energy crisis, causing long waiting lines at gasoline stations and altered lifestyles. During these shortages, long-distance travelers and commuters

alike were encouraged to shift from their cars to mass transit vehicles. Energy shortages led to the imposition of a 55-mile-per-hour speed limit and other conservation measures. In a more lasting change of habit, American drivers chose to purchase smaller, more energy-efficient cars instead of bigger "gas guzzlers."

The energy crisis brought disaster to the system of financing highways in two ways. First, because travelers drove less and drove smaller cars, they purchased less fuel; hence fewer dollars went into the Highway Trust Fund from gasoline taxes. Second, fuel shortages increased energy costs, severely inflating highway construction expenses. Highway materials and construction methods depend on intensive use of petroleum, increasing the costs of road construction 50 percent above the general rate of inflation. According to a 1981 estimate by the Congressional Budget Office, all but 1,575 miles of interstate highways were complete, but remaining construction will cost $38.8 billion in 1979 dollars.

The problem of physical deterioration became evident in the late 1970s as each year more interstate highways reached the end of their *design life*—the 20-year period for which they were engineered. Some portions of the system are wearing out even sooner because of heavier traffic on them than anticipated. Older roads, built before the interstate system, are in worse shape. Highway officials estimate that maintenance of the interstate system will require more than $16 billion worth of repairs in the next few years. In 1981, the Federal Highway Administration identified more than 167,000 deficient bridges in the United States, requiring more than $33 billion to repair or replace.

Responding to the Highway Crisis

The highway crisis, although primarily the responsibility of the federal system, requires responses from each affected level of government. Many local officials, needing to fix potholes and repair streets, have their own severe revenue problems. At the state level, governors and state highway officials often face deficits and must cut back on needed road maintenance. At the federal level, financial resources cannot keep up with rapidly growing costs. Highway interest groups, along with officials at every level, tried to resolve the crisis.

Traditionally in the federal-aid highway program, federal money was available only for construction. The interstate system, however, added a whole new dimension to costs of maintenance, and the federal government cannot afford to keep the network in good repair. As evidence mounted that the interstates needed major rehabilitation, Congress moved to alter the federal government's role in funding maintenance. Recent federal highway legislation includes sizable authorizations for repairs on interstate highways and highway bridges.

In the early 1980s, other solutions to the highway crisis were proposed. Several interest groups and state highway officials urged indefinite extension of the Highway Trust Fund to assure continued financing for federal-aid highway projects. State officials emphasize the states' need for these federal dollars. The states also complain that money in the trust fund is accumulating rather than being spent, limiting the funds available for state use. According to the states, this violates the spirit of federalism.

Another more controversial suggestion for increasing the Highway Trust Fund's effectiveness is to raise user fees. In 1980-81, several interest groups supported a general increase in the fuel tax to keep pace with inflation. Others felt that political conditions were unfavorable for such a tax increase. At the state level, a majority of states recently raised their fuel taxes, some more than once.

State highway administrators generally agree that federal regulations and red tape increase the cost and length of time required for road construction. Officials particularly complain of inflexible environmental regulations:

> Environmental regulations and provisions attempting to protect all areas of the environment have significantly caused project delays and higher costs. Protecting wetlands, air, and water are noble goals, but the price being paid is higher than anticipated under the original law, and must be questioned. A more reasonable balance between protecting these natural resources and the cost of protection must be achieved.

State highway officials urge simplification of the entire regulatory process. They also recommend saving money by consolidating minor categorical programs into six major funding divisions.

The Reagan administration, which entered office in January 1981, proposed still another solution to the highway crisis. After campaigning against big government, President Reagan was determined to cut down on the size, complexity, and costs of federal programs. Representing the president's views, Secretary of Transportation Drew Lewis proposed new highway legislation that would eliminate some federal-aid activities. Arguing that some programs are not of primary national interest, Lewis declared: "We need to define the appropriate federal role and to return to state and local governments and the pri-

vate sector the responsibility and the authority to deal with matters that do not require federal involvement." Lewis wanted to restructure federal-state relations by eliminating federal funding for secondary and urban highway programs. Cutting such lesser programs would make more funds available for construction and repairs on the interstate system.

Instead of approving the Lewis highway proposal, Congress passed its own highway bill in 1981. In the House of Representatives, the Subcommittee on Surface Transportation organized a major study of the the highway crisis and federal programs needed to resolve it. Congress was not ready to dismantle or restructure a traditional federal responsibility without considering other options.

In July 1981, the House Subcommittee on Surface Transportation conducted major hearings to examine the needs of all transportation networks. Testimony was given by the highway lobby, mass transit authorities, railroad representatives, trucking and bus associations, organized labor, city and county governments, environmentalists, and others. Most witnesses agreed that highways suffer from severe deterioration. Experts provided statistics about highway needs. General consensus was that, because of inadequate revenues, highways receive less maintenance than they need.

Who is Responsible?

Most discussions in the hearings centered around three issues:

- What are federal and state responsibilities?
- Who will pay the very large sums required for transportation?
- How rigid or flexible will standards be?

Although participants agreed that federal aid should help finish the interstate system, there was no consensus on which interstate highways are essential. One option—to complete only nationally significant segments—would save billions of dollars. Many highway officials argued that, although it is economical, this option is unfair to the many localities that expect to finish locally important interstate routes. Some witnesses accepted limiting federal responsibilities only to interstate and primary highways. Several community representatives, however, defended the need for national help in constructing and upgrading secondary and urban roads. Without such aid, states would not have the incentive to work on local routes, and city residents would not receive the benefits of their user fees.

State officials insisted that states are doing all they can to support highways, raising their own fuel taxes and stretching their financial resources to the limit. While the majority of witnesses favored relaxed and flexible federal highway regulations to reduce red tape and costs, safety authorities and environmentalists warned that lowered standards might lead to more accidents and environmental damage. Arguments occurred over the national 55-mile-per-hour speed limit. In general, these lengthy hearings concluded that the federal government should remain actively involved in the highway program.

A New Federalism for Highways?

Even before he took office, President Reagan argued that the nation needed a renewal of federalism, shifting more governmental functions to the states. Speaking to a conference of state legislators, he called for a reordering of national priorities, "seeking to return discretion, flexibility, and decision making to the state and local level." The president complained of excessive centralization:

> Today the federal government takes too much taxes from the people, too much authority from the states, and too much liberty with the Constitution. Americans have at last begun to realize that the steady flow of power and tax dollars to Washington has something to do with the fact that things don't seem to work anymore.

A major theme of President Reagan's 1982 State-of-the-Union address was a program of New Federalism that would transfer many responsibilities from the national government to the states. The president's proposal ignited a lively, often partisan debate. Governors and others who favored state activities welcomed the possibility of reduced federal

The interstate highway system, built with federal and state contributions, totals nearly 43,000 miles, connecting most American cities with populations of 50,000 or more.

regulations and more flexible state programs. Critics of New Federalism complained that the plan would unload programs on already financially overburdened states. They called the proposal an indirect way of reducing federal deficits.

The 1982 New Federalism initiative contained two elements. One proposal called for a swap of social programs. The federal government would return Aid to Families with Dependent Children and food stamp programs to the states, and in return, the federal government would fund Medicaid completely. Second, the administration proposed a "turnback" of some forty-three programs to the states, along with a Federalism Trust Fund to help the states pay for the programs. Several federal highway programs were part of this turnback, including the primary, rural, and urban highway systems, the bridge repair program, safety programs, and assistance for mass transit. The federal government would continue to fund the interstate program.

Highway interests reacted cautiously to the president's New Federalism. The Highway Users Federation asserted that the federal-state "highway program partnership embodies the best features of New Federalism." The federation opposed any fundamental change in the program: "The basic federal-aid construction programs for Interstate Primary, Secondary, and Urban highway programs should be continued with only slight modifications, as well as the federal programs for traffic safety and bridge replacement and rehabilitation."

The American Association of State Highway and Transportation Officials (AASHTO) emphasized unmet highway needs, estimated that $160.6 billion (in constant dollars) will be required to complete work necessary in the 1980s, and called for expanding and indefinitely extending the Highway Trust Fund. AASHTO also advocated consolidating and simplifying the federal-aid highway program to make it more effective and flexible. However, in early 1982, the AASHTO Policy Committee adopted a carefully worded statement in favor of "sorting out" federal and state responsibilities for transportation.

The National Governors' Association took President Reagan's New Federalism idea more seriously than other highway supporters. The governors endorsed a "federal-state partnership" with a plan for "sorting out" state and national highway programs. Governor Robert D. Orr of Indiana, chair of the Governors' Committee on Transportation, explained:

> We face a tough challenge when we attempt to determine where the federal responsibility ends and state and local responsibility begins. Clearly, development and improvement of the national Interstate system and its related program should remain a federal responsibility. Just as clearly, the case can be made that programs serving basically intrastate and local traffic do not represent a significant national interest.

Urban and rural secondary roads are thus "strong candidates for turnback to the states."

The National Governors' Association noted: "It is crucial that the revenue level be commensurate with the level of program responsibilities to be turned back." In any transition from federal to state authority for highways, money should go with responsibility. The association suggested either that federal grants accompany the turnback of programs or that new sources of revenue be made available at the state level. The governors wanted to retain a decisive state role in the highway program: "State government should continue as the primary authority for coordination, planning, and flexible distribution of transportation funds within the states."

Congress Acts

When Congress came to act on the issues raised by Reagan's New Federalism, it modified the president's highway proposals significantly. Congress based its new legislation on lengthy study and a proposal by Secretary of Transportation Drew Lewis. By January 1982, Lewis had changed his mind about reducing the national commitment to highways. He then began discussing a plan to increase federal highway and transit funds by means of raising the fuel tax or user fee.

Different public and private interests soon lined up on both sides of the Lewis proposal. Groups of highway users and contractors generally supported the proposal, while taxpayers and economy-minded interests opposed raising taxes. Lewis's ideas were incorporated into a congressional bill (H.R. 6211), but in May 1982 the president came out against the measure, wanting to hold the line on any budget increases. Intense lobbying and legislative maneuvering continued through the summer and fall. In October, without a final resolution, Congress recessed for the fall elections. The highway bill appeared to be dead for the 97th Congress.

Congress returned after the elections for a lame duck session. The election strengthened support for a "jobs bill" to create employment on public works projects. Bowing to pressure, President Reagan agreed to support the increase in fuel taxes. Under the extreme tension of a pre-Christmas rush, working nights and weekends, the House and Senate

passed separate highway bills, then approved conference reports, and in the final frantic days of the 97th Congress, passed the Surface Transportation Act of 1982. Approved under exhausting and panicky circumstances, the bill did not please everyone. Nevertheless, it preserved and invigorated the collaboration between federal, state, and local governments. Federalism gained new vitality in the field of highway planning, construction, and maintenance when the president signed the bill on January 6, 1983.

The Surface Transportation Act of 1982 testifies to congressional faith in federalism. It also bears the imprint of President Reagan's New Federalism. The law provides four-year authorizations for federal-aid highway projects, safety programs, and mass transportation. Funding levels established in the law are the highest ever for highways and mass transit. However, several important changes are incorporated. The fuel tax rises from four to nine cents per gallon, and other user fees are modified, including substantially higher taxes on large trucks, reflecting the highway wear caused by heavy vehicles. The law provides for a four-year extension of the Highway Trust Fund and devotes one-ninth of fuel tax revenues to mass transit. The bill also provides $16 billion, in annual authorizations of $4 billion over the four-year period, for interstate highway construction, primarily on parts of the system not open to traffic. Interstate repair funds are increased to $10.3 billion, and funds for the primary system are authorized at $8.7 billion. In harmony with the New Federalism, secondary and urban funds are reduced proportionally but not eliminated.

Some cities, such as San Francisco, are using highway funds to build subways to complement overburdened highways.

The law authorizes $7.05 billion for bridge replacement and rehabilitation to help stem the increasing deterioration and obsolescence of highway bridges. It also includes a variety of federally sponsored safety programs. Public transit receives more than $17.7 billion for the four years. More than any earlier federal-aid highway law, the 1982 bill illustrates serious support for maintaining existing highways and transit systems. The federal government accepts responsibility for maintaining, as well as building, the nation's highways.

Several provisions relating to heavy trucks are controversial. New federal rules override some state limits on the weight and size of heavy trucks, requiring all states to accept two-trailer rigs, or "double bottoms," on interstate and primary highways. Some states object to these changes as violations of their rights under traditional federal-state relationships. Other states, especially in the West, want to disregard the 55-mile-per-hour speed limit, but Congress strongly supports this law.

Highway supporters are generally pleased with the new law and its reaffirmation of federalism. The Highway Users Federation is satisfied that the law "increases funding to rebuild the nation's worn-out transportation facilities." Although they are happy with increased federal highway support, state highway officials wish the law eliminated more regulations. The Association of American Railroads favors the increased user fees on heavy trucks, which, according to the railroads, do not pay their fair share of highway costs.

Most vehement in their opposition to changes in the highway law are the truckers. The American Trucking Association's trade organization has vowed to seek repeal of most provisions in the law that "penalize" heavy vehicle operators. The Independent Trucking Association, composed of drivers who own their rigs, called a brief strike of its members early in 1983 to protest increased user fees for trucks. Michael Parkhurst, leader of the independent owners, calls the new measure "the trucking industry bankruptcy law."

Many environmentalists also oppose the new highway law on the grounds that the largest sums are allocated for new construction, not to repair worn-out highways and bridges. They argue that many proposed interstate segments are not necessary for completion of the national highway network and are not cost-effective. In addition, these interstate portions have a harmful impact on urban communities. Harriet Holtzman-Parcells of the Environmental Policy Center complains:

> The public is being given a Christmas present whose contents have not been accurately represented. The public thinks it's getting a repair bill. The fact that half the highway monies are going to new highway construction, not repair, has not been aired. It is ironic, moreover, that an administration that advocates states' rights is pushing legislation that overrides many states' truck size and weight limits.

Unanswered among the many questions about the law is whether it will really accomplish needed restoration of the nation's highways. During final debates on the bill, Senator Paul Tsongas (D-Mass.) attempted unsuccessfully to amend it by reducing construction funds and raising amounts devoted to repair and rehabilitation. The senator stated:

> At a time of severely limited government resources, I believe it is imperative that we make best use of each dollar by spending it on those repairs most critically needed. We simply cannot afford anything else.

The senator's pleas were in vain.

The New Federalism in 1983

In his 1983 State-of-the-Union address, President Reagan restated his interest in restructuring the federal system. He proposed to create four block grants consolidating thirty-four programs for transfer to state and local governments. The block grants would provide a total of $21 billion to the states each year from 1984 to 1988. A State Fiscal Assistance Block Grant would combine twenty-two categorical health, social, and educational grants. A Local Fiscal Assistance Block Grant would bring together general revenue sharing and community development. A Rural Housing Block Grant would consolidate four housing programs.

The Federalism Block Grant Highway Act of 1983 would provide $2.36 billion and merge six highway programs into a single grant of funds to replace the six categorical grants. Revenues from the Highway Trust Fund would be allocated to the new block grant. The major advantage of the block grant for the states is to provide program flexibility. By offering block grants instead of categorical grants, the federal government removes many restrictions on use of the federal funds. States may shift funds in one category to others. Although the states have reservations about the block grant proposal, it remains as the administration's latest New Federalism initiative. In late summer of 1983, the proposal was still pending in Congress.

Federalism's Future: The Infrastructure

Recent proposals by the president, members of Congress, and special interest groups aim to reduce the federal government's role or to redistribute responsibilities in the federal system. The proposals fail to deal with one of the most critical national problems of the 1980s, namely the alarming condition of the infrastructure, the basic network of roads, bridges, sewers, water systems, and other public works essential to America's functioning.

Potholes and deterioration symbolize today's highway problems. They also reflect the larger relationship of the infrastructure and the federal system. In the early 1980s, magazines such as *Time* and *Newsweek* published cover stories about worn-out highways, bridges, dams, and water, sewer, and transit systems. A 1982 *Newsweek* story has the title "The Decaying of America," and author Pat Choate called his report on the national infrastructure "America in Ruins." Even the word "infrastructure" has only recently become a term of fairly common usage because of public concern for decayed vital systems.

The deterioration of public works results from old age, neglect, and misuse. The aging of systems to supply water and remove sewage occurs out of sight and is easily forgotten. Inadequate maintenance results from chronic local, state, and federal shortages of funds during the 1970s and 1980s. Systems like highways or sewers, overloaded beyond their real capacities, suffer from misuse.

Besides articles in the popular press, abuse of the infrastructure has received ample attention. Studies by the Urban Institute in Washington, D.C., illustrate the condition of public works in six cities: New York, Dallas, Boston, Cincinnati, Oakland, and Cleveland. Despite differences among the cities, the studies show patterns of deferred maintenance and neglect, especially in cities with the oldest public facilities and the weakest financial structures.

In 1983, the Congressional Budget Office released a study of infrastructure problems and their implications for the federal system. The study considers seven kinds of public facilities in which the federal government maintains an interest, paying particular attention to federal responsibilities for protecting public investments in basic services. Three basic questions are asked:

- How should the costs of future infrastructure spending be divided among the various participants—the federal, state, and local governments and the users of infrastructure services?
- What areas of infrastructure spending are the federal government's province, as defined by the interests of the nation as a whole? and
- How can federal policies encourage the selection of cost-effective projects in general, including an ap-

propriate balance in investments between new construction and maintenance?

Some public officials argue that most infrastructure issues are not really national problems, that water, sewer, transit, and other systems are local concerns requiring local financing and management. Local officials who need federal assistance argue that the national economy depends on bridges, highways, and other facilities to improve productivity. Thus the national interest requires continuing federal investments. Past federal grants have encouraged construction of new facilities instead of maintenance, so it is in the national interest to devote federal funds to keeping up serviceable public works. Many states and cities have cut back severely on maintenance due to reduced tax bases and declining populations and economies. According to this view, the federal government has a responsibility to help these depressed states and cities restore their infrastructures.

In the 1980s, Congress began examining problems of the infrastructure, considering possible legislation. Hearings revealed that no certain information exists about possible costs of renewing the nation's public works. There is no comprehensive inventory of the government's capital assets. Some authorities estimate that $2.5 to $3 trillion may be required to repair and replace the infrastructure during the next fifteen years. What should be the national responsibility to pay these incredible sums? In both the Senate and the House of Representatives, bills have been introduced to prepare inventories of public assets and to find out what needs to be done and what the costs will be.

By shortening the amount of time it takes commuters to arrive in the city, interstate highways have caused greater migration from the inner city to the suburbs.

A major obstacle to maintaining and restoring the national infrastructure is the legislative tradition of the "pork barrel" (a government project yielding benefits for a particular congressional district). Pork barrels, in this case, encourage the construction of expensive, often unnecessary public works. Representatives enjoy giving their states or districts "presents" of building projects that create local jobs and reward political friends. Highways, dams, water projects, public buildings, or other large construction projects are extremely popular in Congress. Current examples of "pork" often cited by critics include the "Westway" highway in New York City (estimated to cost $4 billion, nearly $1 billion per mile), the Tennessee-Tombigbee Waterway (a multi-billion-dollar barge canal along the Alabama-Mississippi border), and the Clinch River Breeder Reactor in Tennessee.

Pork barrel projects distort the federal investment by diverting funds to new construction of doubtful merit. Older existing investments are allowed to decay from lack of maintenance in the process. Representative Bob Edgar (D-Penn.) calls for a reform of the public works budget in Congress:

> No longer should we make and justify capital investment decisions on a piecemeal, project-by-project, year-by-year basis. The capital investment choices in each year's federal budget should be based on a long-term plan of maintenance, repair, and replacement of our facilities. Such planning should replace our traditional fascination with new construction and politically motivated ribbon-cutting.

Public works legislation is seldom judged on its own merits. Many federal capital investments have a pork barrel appeal to representatives in Congress. Other projects are popular not because they respond to public needs for improved infrastructure, but because they have another purpose—such as providing jobs for construction workers and producers of building supplies and equipment. The most frequent aim of public works bills introduced in the early 1980s was to create jobs, putting people to work during the severe unemployment of these years. Legislation targeted funds at areas of the country with serious joblessness, regardless of specific conditions of their infrastructure. Several recent bills emphasize new construction over repair and maintenance. Federal jobs bills tend to discourage state and local governments from committing their own funds to infrastructure repairs as they wait for federal assistance. For these and other reasons, government-assisted emergency employment is not likely to end the deterioration of public facilities.

The Challenge of the 1980s

The overriding concern in rebuilding America's public facilities is cost. Paying for highways and other public works will require an imaginative combination of national, state, and local sources of funds. Although some tax revenues may be available for local repairs, pressure for social spending and tax relief are likely to prevent local authorities from allocating much new money to infrastructure maintenance.

Officials throughout the federal system are seeking new resources. User fees—such as motor fuel taxes and licenses, water and sewer fees, tolls, transit fares, and park admissions—are likely to rise and support better upkeep of public facilities. User-fee support of highways is already a well-established tradition and may, as a result of new and larger charges, be sufficient to maintain and upgrade the highway network. Government borrowing, often secured through user-fee revenues, provides another means of paying for costly public works. Financial experts at all levels are studying a variety of new borrowing techniques. An infrastructure bank or revolving fund—now being tried by several states—shows promise as a borrowing device. The bank combines federal, state, and local capital in support of loans to local communities for public works. Each level of government supports the efforts of other levels.

Regardless of its form, improved management of the infrastructure will remain a responsibility of the federal system. Each level of government must find ways to maintain its own public facilities. Some capital investment costs, such as highways, will be shared by more than one level of government. Others will be sorted out and funded entirely at the federal, state, or local levels.

The infrastructure is a critical national resource, essential to the efficient performance of the entire American economy. Repairing and rebuilding the nation's public works will be a major challenge to the federal system in the 1980s. In addition to highways, other portions of the infrastructure will be renovated through a federal-state partnership.

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The Constitution of the United States

(Portions of the text printed in italics have been changed by amendment or have gone out of date.)

Preamble

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article 1. The Legislative Branch

Section 1. Congress

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. House of Representatives

1. Election and Term of Members. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. Qualifications. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Apportionment of Representatives. Representatives *and direct taxes* shall be apportioned among the several states which may be included within this Union, according to their respective numbers *which shall be determined by adding the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.* The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed 1 for every 30,000, but each state shall have at least 1 Representative; *and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose 3; Massachusetts, 8; Rhode Island and Providence Plantations, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia 10; North Carolina 5; South Carolina, 5; and Georgia, 3.*

4. Vacancies. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. Impeachment. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. Senate

1. Number of Members and Terms of Office. The Senate of the United States shall be composed of two Senators from each state *chosen by the legislatures thereof,* for six years, and each Senator shall have one vote.

2. Classification; Vacancies. *Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.*

3. Qualifications. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The President of the Senate. The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

5. Other Officers. The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice-President, or when he shall exercise the office of the President of the United States.

6. Impeachments. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Penalty for Conviction. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

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Section 4. Elections and Meetings

1. Holding elections. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2. Meetings. The Congress shall assemble at least once in every year, *and such meeting shall be on the first Monday in December* unless they shall by law appoint a different day

Section 5. Procedure

1. Organization. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Proceedings. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

3. The Journal. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Adjournment. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. Privileges and Restrictions

1. Pay and Privileges. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning home from same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. Restrictions. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time, and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section 7. Passing Laws

1. Revenue Bills. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. How a Bill Becomes a Law. Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approves, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same bill shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Presidential Approval or Veto. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be represented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations in the case of a bill.

Section 8. Powers Delegated to Congress

The Congress shall have power

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several states, *and with the Indian tribes;*

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

11. To declare war, *grant letters of marque and reprisal,* and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, supress insurrections, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to

the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. Powers Denied to the Federal Government

1. *The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding $10 for each person.*

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. *No capitation or other direct tax shall be laid, unless in proportion to the census herein before directed to be taken.*

5. No tax or duty shall be laid on articles exported from any state.

6. No preference shall be given any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

7. No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. Powers Denied to the States

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debits; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and such laws shall be subject to the revision and control of the Congress.

3. No state shall, without consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in a war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article 2. The Executive Branch

Section 1. President and Vice-President

1. Term of Office. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Electoral System. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. Former Method of the Electoral System. *The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by states, the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.*

4. Time of Elections. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. Qualifications for President. No person except a natural-born citizen *or a citizen of the United States, at the time of the adoption of this Constitution,* shall be eligible to the office of the President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. Filling Vacancies. In the case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. Salary. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Oath of Office. Before he enter on the execution of his office, he shall take the following oath or affirmation;—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section 2. Powers of the President

1. Military Powers. The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the option, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. Treaties and Appointments. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. Filling Vacancies. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. Duties of the President

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all of the officers of the United States.

Section 4. Impeachment

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article 3. The Judicial Branch

Section 1. Federal Courts

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2. Jurisdiction of Federal Courts

1. General Jurisdiction. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; *between a state and citizens of another state;* between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

2. Supreme Court. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. Conduct of Trials. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason

1. Definition. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. Punishment. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

Article 4. Relations Among States

Section 1. Official Acts

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be

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proved, and the effect thereof.

Section 2. Privileges of Citizens

1. Privileges. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. Extradition. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. Fugitive Slaves. *No person held in service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.*

Section 3. New States and Territories

1. Admission of New States. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

2. Powers of Congress Over Territories and Other Property. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. Guarantees to the States

The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened) against domestic violence.

Article 5. Methods of Amendment

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that *(no amendments which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the Ninth Section of the First Article; and that)* no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Article 6. General Provisions

1. Public Debts. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. The Supreme Law. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

3. Oaths of Office. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article 7. Ratification

The ratification of the convention of nine states shall be sufficient for the establishment of the Constitution between the states so ratifying the same.

DONE in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eight-seven and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names,

G. Washington—President and deputy from Virginia

NEW HAMPSHIRE
John Langdon
Nicholas Gilman

NORTH CAROLINA
William Blount
Richard Dobbs Spaight
Hugh Williamson

MARYLAND
James McHenry
Daniel of St. Thomas Jenifer
Daniel Carroll

PENNSYLVANIA
Benjamin Franklin
Thomas Mifflin
Robert Morris
George Clymer
Thomas FitzSimons
Jared Ingersoll
James Wilson
Gouverneur Morris

NEW YORK
Alexander Hamilton

MASSACHUSETTS
Nathaniel Gorman
Rufus King

SOUTH CAROLINA
John Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

VIRGINIA
John Blair
James Madison

DELAWARE
George Read
Gunning Bedford
John Dickinson
Richard Bassett
Jacob Broom

NEW JERSEY
William Livingston
David Brearley
William Paterson
Jonathan Dayton

CONNECTICUT
William Samuel Jackson
Roger Sherman

GEORGIA
William Few
Abraham Baldwin

The first ten amendments constitute the Bill of Rights. They became an official part of the Constitution in 1791. They limit the powers of the federal government but not the powers of the states.

Amendment 1. Freedom of Religion, Speech, Press, Assembly and Petition (1791)
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 2. Right to Bear Arms (1791)
A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Amendment 3. Housing of Troops (1791)
No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Amendment 4. Searches and Seizures (1791)
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5. Rights of Accused Persons (1791)
No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6. Right to a Speedy, Fair Trial (1791)
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment 7. Civil Suits (1791)
In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

Amendment 8. Bails, Fines, Punishments (1791)
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9. Powers Reserved to the People (1791)
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10. Powers Reserved to the States (1791)
The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment 11. Suits Against States (1798)
The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

Amendment 12. Electing the President and Vice-President (1804)
The electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. *And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and

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a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment 13. Abolition of Slavery (1865)
Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment 14. Citizenship (1868)
Section 1. Citizenship defined. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Section 2. Apportionment of Representatives. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, *excluding Indians not taxed.* But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, *being twenty-one years of age* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens *twenty-one years of age* in such state.
Section 3. Disability for engaging in insurrection. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by vote of two-thirds of each house, remove such disability.
Section 4. Public debt. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States *or any claim for the loss or emancipation of any slave;* but all such debts, obligations, and claims shall be held illegal and void.
Section 5. Enforcement. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment 15. Right to Vote (1870)
Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color, or previous condition of servitude.
Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment 16. Income Tax (1913)
The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Amendment 17. Electing Senators (1913)
Section 1. Method of election. The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.
Section 2. Filling vacancies. When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.
Section 3. Not retroactive. *This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.*

Amendment 18. Prohibition (1919)
Section 1. *After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from, the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.*
Section 2. *The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.*
Section 3. *This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.*

Amendment 19. Women's Suffrage (1920)
Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.
Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment 20. "Lame Duck" Amendment (1933)

Section 1. Beginning of terms. The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. Beginning of Congressional sessions. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the third day of January, unless they shall by law appoint a different day.

Section 3. Presidential succession. If at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

Section 4. Filling Presidential vacancy. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

Section 5. Effective date. *Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.*

Section 6. Time limit for ratification. *This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within the seven years from the date of its submission.*

Amendment 21. Repeal of Prohibition (1933)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. *This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.*

Amendment 22. Two-Term Limit for Presidents (1951)

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. *(But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.)*

Section 2. *This Article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.*

Amendment 23. Presidential Electors for District of Columbia (1961)

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice-President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment 24. Poll Taxes (1964)

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Amendment 25. Presidential Disability and Succession (1967)

1. In case of the removal of the President from office or his death or resignation, the Vice-President shall become President.

2. Whenever there is a vacancy in the office of the Vice-President, the President shall nominate a Vice-President who shall take the office upon confirmation by a majority vote of both houses of Congress.

3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties shall be discharged by the Vice-President as Acting President.

4. Whenever the Vice-President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the

House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice-President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within 48 hours for that purpose if not in session. If the Congress, within 21 days after receipt of the latter written declaration, or, if Congress is not in session, within 21 days after Congress is required to assemble, determines by two-thirds vote of both houses that the President is unable to discharge the powers and duties of his office, the Vice-President shall continue to discharge the same as Acting President; otherwise, the President shall assume the powers and duties of his office.

Amendment 26. Voting Age Lowered to 18 (1971)
Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any state on account of age.
Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

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Glossary

abstention—the act of not voting.
accountability—the state of legislative and executive officials being responsible for their actions to the people who elected them.
adjudication—the process of determining what a law means in a specific case.
administration—used to refer to the tenure of a president of the United States or to the whole body of executive officials; e.g., the Nixon administration (1969-74).
adversary—opponent in an election or debate; also used to describe opponents in court.
affirmative action—policies by government, businesses, educational institutions and other organizations to provide educational and employment opportunities to minorities. Mandated by the Civil Rights Act of 1964 and by Supreme Court decisions.
amendment—addition to, alteration of or deletion from a bill that can be made in committee or on the floor of a legislative body. (See **constitutional amendment.**)
appeal—formal request to a high court that it re-examine a verdict reached by a lower court.
appointment power—power of the president to appoint Supreme Court justices, Cabinet secretaries, agency directors, ambassadors and other high-ranking officials. Enumerated in the Constitution, Article II, Section 2.
apportionment—division into districts based on population for the purpose of electing representatives to the state legislature and to Congress. *Reapportionment* becomes necessary when there are population changes.
appropriation—grant of money by the Congress to executive agencies for the purpose of carrying out a specific authorized program.
Articles of Confederation—the framework that held the 13 colonies together from 1776 to 1789, at which time it was replaced by the Constitution. Among the problems with the Articles were the lack of federal power to raise revenues, the existence of separate currencies and poor interstate relations.
attorney general—member of the Cabinet, head of the Justice Department. Appointed by the president with Senate confirmation.
autonomy—right of self-government; usually exercised by electing representatives.
backlash—describes a strong negative reaction to some social change or public policy, generally motivated by fear, prejudice or anger.
balanced budget—a budget in which expenditures, or the amount of money that the government spends, is equal to revenues, or the amount taken in.
bicameral—a legislature with two chambers.
bill—a proposal to the legislature. If passed, a bill becomes a law. May be a private bill for the special benefit of an individual, or a public bill of general interest.
Bill of Rights—the first 10 amendments to the Constitution of the United States. These guarantee fundamental rights and privileges of all citizens against infringement by the government.
bipartisan—representative of, or having the support of, both Republicans and Democrats.
block grant—general funds allocated by the federal government to state and local governments to be spent as the localities see fit.
boycott—a united effort to stop buying products of a particular company, or severing relations with a particular nation as a means of protest.
bureau—an administrative division within a government agency.
bureaucracy—a formally established organization characterized by job specialization, hierarchy of authority and a system of rules. Usually denotes the civil service employees of the executive branch of government.
Cabinet—the 13 department secretaries. Members function as the president's advisory council and as the administrators of his policies. Developed by custom rather than constitutional requirement.
calendar—agenda of business pending before the House and the Senate. The first step for a bill to become law is to get onto the legislative calendar.
canvass—to seek votes, support or opinions; especially door-to-door.
categorical grant—federal funds provided to state and local governments for specific purposes.
caucus—the primary or mass convention of voters in townships or wards; used especially in western states. (See **congressional caucus.**)
censorship—examination of any printed matter, broadcast or dramatic spectacle, prior to publication or transmission, for the purpose of making deletions or revisions for the preservation of military secrets, public morality or the interests of religion.
checks and balances—a fundamental principle underlying the U.S. Constitution, that gives each of the three branches of government powers to overrule actions by another branch. For example, the president can veto a congressional action, but only congress can appropriate money for him to spend. In effect, neither the executive, legislative or judicial branch can wield absolute authority.
civil law—laws covering noncriminal offenses committed by private individuals, groups or organizations against other private parties or the government.
civil liberties—rights of individuals and organizations to be protected from interference or repression by government officials because of their political beliefs or their exercise of freedoms as guaranteed by the Constitution and Bill of Rights.
civil rights—rights of individuals, particularly of minorities, to equality under the law. The civil rights movement has opposed inequality, segregation and repression because of race on the part of businesses, organizations and individuals, as well as by the government.
civil service—the body of career employees of the government, who attain their positions through the merit system. (See **political appointees** and **spoils system.**)
civilian control—principle established in the Constitution that the military will be subject to the authority of the elected government. Guaranteed by the power given to the president as commander-in-chief.
class action suit—lawsuit brought by one party in the name of others or "the public."
cloture—an attempt to limit debate in the Senate by setting a time when the vote will be taken.
coalition—alliance or union of individuals or groups for the purpose of promoting a common legislative policy or political objective.
coattails effect—occurs when candidates of a party are swept into office because of the popularity of the major candidate (generally, the president) of their party.
committee—a subgroup of Congress that studies and writes legislation in a specialized subject area, oversees federal agencies or con-

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trols the administration of Congress.

common law—law made by judges, rather than by legislatures. Based on earlier decisions (precedents) by the courts.

confederate system—a governmental system in which the regions or subdivisions are strong and the central system is weak. This system differs from a federal system in that the states command most of the power. However, they are similar in that the power is divided.

conference committee—formed when the House and Senate have passed differing versions of a bill. Composed of members of both chambers who seek to work out a compromise. Once a compromise is reached, the bill is returned to both chambers for another vote.

confirmation—power of the Senate to approve the appointment of Supreme Court justices, Cabinet secretaries and other high-ranking officials nominated by the president.

congressional caucus—a group of representatives or senators who have similar interests or affiliations; e.g., Democratic Caucus, Congressional Black Caucus, New England Caucus.

Congressional Record—official daily publication of all debates and proceedings of the Congress.

Connecticut Compromise—the agreement made at the Constitutional Convention of 1787 that addressed how members of the national Congress would be selected. This same system remains in effect today.

conservatism—political philosophy that advocates control over change by blending elements from the past with new ideas. Generally supports a lesser role for the federal government in American life.

constituency—those citizens who are represented by and elect a particular senator or representative; e.g., Senator Claiborne Pell's constituents are the people of Rhode Island.

constitution—document recording the fundamental principles that govern a nation, state or organization.

Constitution of the United States—the written document that established the framework of our government by setting forth the powers and duties of the federal branches and defining the relationship of the federal government to the state governments and of the people to the government.

constitutional—describes an action or practice authorized by the Constitution.

constitutional amendment—additions to, or changes of, the Constitution. Requires a two-thirds vote in both houses of Congress and ratification by three-fourths of the state legislatures to take effect.

convention (national)—a meeting every four years where each political party selects its presidential and vice presidential candidates, writes a platform and selects a national committee to take care of party business. Delegates are selected by party members in each state to represent them.

dark horse—a candidate for public office who has marginal support and little chance of winning an election.

de facto—condition existing in fact. Example: de facto segregation means actual separation of the races whether or not supported by the law.

de jure—condition existing by law. Example: de jure segregation means the separation of the races sanctioned by law.

defendant—person charged with a crime.

deficit spending—government practice of spending more than it takes in.

demagogue—politician who lacks scruples and attempts to gain popularity through flattery, false promises and appeals to mass prejudice and passions.

depression—sharp economic decline with high levels of unemployment, decreased business activity and widespread suffering. Last major depression in the United States was in 1929.

desegregation—process of eliminating segregation by race.

devolution—delegation of authority accumulated by the federal government back to state or local governments.

discrimination—unfair treatment and denial of rights and privileges guaranteed by law on the basis of sex, race, religion, ethnicity or other factors. (See **civil rights.**)

disenfranchised—refers to persons who either do not have the right to vote, or feel that their votes are insignificant and their interests not represented by the government.

district attorney—government official who represents the state in prosecuting criminal cases and bringing indictments.

double jeopardy—prosecuting a person twice for the same crime. Prohibited by the Fifth Amendment to the Constitution.

dual federalism—a judicial doctrine that holds that under the 10th Amendment, the powers of the national and state governments are separate and distinct.

elections (national)

president—elected for four-year term, maximum of two terms.

House of Representatives—435 members proportioned according to population, each elected for two-year terms, with no maximum number of terms.

Senate—100 members, two per state, elected for six-year terms; no maximum number of terms. Every two years, one-third of the senators stand for re-election.

Electoral College—body of electors popularly chosen in the states and the District of Columbia who meet in their respective state houses in December and cast votes for the presidential candidates who received a plurality in their respective states. The body never meets as a collective unit; rather the votes are sent to the president of the Senate and counted in a joint session of Congress on January 6.

electronic media—television and radio. (See **mass media.**)

elite—persons who exercise a major influence on political, economic and social decisions. Narrow and powerful groups who achieve their position through wealth, social status and/or intellectual superiority.

emergency powers—powers granted by Congress to the president for a limited time during a crisis.

executive agreement—an international agreement made by the president with other heads of state which, unlike a treaty, does not require ratification by the Senate.

Executive Office of the President—official name for the assistants and agencies under the direct control of the president. Established by the Reorganization Act of 1939. (See the diagram and chart in Chapter 1.)

executive order—rule or regulation issued by the president, or in his name by an executive branch official, that has the force of law without passing Congress.

executive privilege—limited right of members of the executive branch to refuse to give certain information (documents, testimony, etc.) to the Congress without the approval of the president. Not defined in the Constitution, it has nevertheless been invoked throughout our history. In recent years, there has been much controversy over its usage; e.g., Watergate, national security cases.

Fairness Doctrine—Federal Communications Commission (FCC) requirement that broadcasters present differing points of view on public issues, as well as equal time to political candidates to air their views.

favorite son—a candidate for the presidential nomination who has little or no support beyond the delegation from his home state.

Federal Election Commission—a six-member bipartisan body appointed by the president with the consent of the Senate to enforce the campaign financing laws as enumerated in the Federal Election Campaign Act of 1974.

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Federal Regulation of Lobbying Act, 1946—requires lobbyists to register with the clerk of the House and the secretary of the Senate, and to state the names and addresses of the persons employing them and the amount of salary and expense allowances that they receive.

federalism—a system of government in which power is divided between a strong central government and subdivisions. In the United States, the division is between the federal government and the states.

felony—a crime for which the maximum penalty is imprisonment for more than one year. Felonies are usually the more serious crimes.

Fifth and Fourteenth Amendments—guarantee that the law will be administered fairly and will follow established procedures, rules and principles that protect the rights of the accused.

filibuster—parliamentary strategy used by a minority in opposition to a bill. Most common in the Senate where the rules of unlimited debate are utilized to delay a vote that would probably mean defeat to those in opposition to the bill.

fiscal policy—action by government to control the form, incidence or rate of taxation, or the amount of public appropriations, including decisions as to whether to incur a surplus or deficit.

fiscal year (FY)—calendar used for budgeting. For the federal government, FY 1983 began on October 1, 1982, and runs through September 30, 1983.

floor—refers to the actual chambers of the House and the Senate where business is conducted by the full membership.

floor manager—the member who manages the bill on the floor of the House or Senate through debate and toward passage, generally the chairman or a ranking member of the committee that reported the bill.

foreign policy—a nation's course of action toward the other nations of the world.

franking privilege—right of legislators to send mail to constituents without having to pay postage.

free trade—policy of allowing unrestricted trade between nations without excessive tariffs or duties. Contrasted with protectionism, a policy of protecting native industries against foreign competition.

Freedom of Information Act, 1966—stipulates that federal agencies must not withhold information from the public except for reasons of overriding public interest or the protection of rights of individuals.

freedom of speech and press—a right guaranteed in American federal and state constitutions to speak or write freely on any subject, provided the speaker does not slander or libel another person or adversely affect some superior interest of the state.

gerrymander—drawing electoral district lines in a manner that intentionally gives one political party an advantage.

government corporation—public agency established to carry out tasks normally performed by private organizations or firms. Structured and organized similar to a private corporation, but subject to the authority of Congress. Examples: Amtrak, U.S. Postal Service, Tennessee Valley Authority (TVA).

grand jury—considers evidence presented by government prosecutors and decides whether or not an indictment should be issued. If so, a separate trial jury is selected to hear the case.

grass-roots—usually describes a movement or action directed at, or stemming from, the general public, rather than from the political leadership or powerful interest groups.

grass-roots lobbying—the indirect activities to influence government officials such as letter writing, telephone campaigns, press conferences and other media events.

gross national product (GNP)—annual dollar value of all goods produced and services sold in every sector of the economy.

habeas corpus—legal principle guaranteeing a speedy and public trial; prevents arbitrary imprisonment.

hearing—committee session held in order to obtain information and opinions on a proposed bill, resolution or issue. Witnesses include officials of the executive branch, interest groups, individuals and others with knowledge or concern for the particular subject being studied.

hopper—where proposed bills are placed for numbering and committee assignment. In the House, bills are deposited in a box attached to the speaker's roster. In the Senate, bills are handed to the legislative clerk, who has a desk on the Senate floor.

human rights—democratic freedoms such as the right to participate in government, the right to emigrate and the right to free choice of religion as guaranteed by the United Nations Universal Declaration of Human Rights of 1948.

impeachment—the process by which the House of Representatives submits a formal written accusation to the Senate for the purpose of removing the president, other executive branch officials or federal judges for reasons of "high crime and misdemeanors."

impoundment—refusal by the president to spend funds duly authorized and appropriated by the Congress. This power was restricted by the 1974 Budget and Impoundment Act.

incumbent—person who is currently in office, contrasted with the "challenger."

independent agency—created by Congress to provide services and conduct programs not included in the Cabinet departments. Administrators are appointed by the president subject to Senate confirmation. Examples: ACTION, NASA, Environmental Protection Agency.

independent—candidate or voter who is not affiliated with a political party.

indictment—formal written accusation charging a person with a crime.

inflation—rising prices resulting in declining purchasing power.

injunction—court order preventing a person or group from taking a specified action.

inside lobbying—activities aimed at influencing decision makers in a direct manner; e.g., by talking to policy makers or testifying before a congressional committee.

integration—different racial and ethnic groups living and working together.

intelligence—information not generally known concerning the political, military, economic and social situation of foreign countries.

interest group—an organized group of people sharing attitudes and concerns on one or more issues that works to influence government policy.

intergovernmental relations—interaction between the federal, state and local levels of government.

interstate—commerce, travel or other activity that involves more than one state. Federal government has jurisdiction over most interstate matters.

intrastate—commerce, travel or other activity within a state. Federal government does not have jurisdiction over most intrastate matters.

investigative reporting—a method used in the field of journalism in which a story line is actively researched by the reporter instead of writing stories as events occur.

Joint Chiefs of Staff—the panel of the country's top military leaders who jointly plan overall defense strategy and work with the secretary of defense, the president and his national security advisers to define our national security policy. The panel consists of the heads of the Army, Marines, Navy and Air Force and a general or admiral selected by the president to chair the panel.

judicial opinions—written decision of a court in which its ruling is explained. Precedents, reasons, definitions and interpretations

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are discussed. Different kinds of Supreme Court opinions are:
majority opinion—ruling of the majority.
concurring opinion—written by a justice who voted with the majority, but for different reasons.
dissenting opinion—opinion of the justice(s) who disagrees with the majority.
judicial restraint—refers to judges who rule on the cases before them but shy away from broad policy implications. Contrasts with judicial activism.
judicial review—authority of the courts to examine legislative or executive acts to determine whether or not they are prohibited by the Constitution.
jurisdiction—limits within which the government may exercise its powers. Also refers to the limits of the powers of particular agencies, branches or levels of government.
lame duck—incumbent who has decided not to run for re-election, or who has been defeated or is prevented by law from being re-elected, and is serving out the final days in office.
liberalism—political philosophy that advocates change through the active participation of the federal government in American life.
lobbying—process whereby an individual or a group of individuals attempts to influence the decision of a member of Congress or any other decision maker.
lobbying reform legislation—proposed bill designed to give people a better idea of what factors influence decisions in the political arena and to make government officials and lobbyists more accountable.
lobbyist—a person who attempts to influence government officials, representing a public or private cause or organization.
markup—the final work of the committee in writing a completed or new bill after hearings have been completed.
mass media—all methods of communication designed to reach the general public; e.g., newspapers, periodicals, radio, television, films, etc.
merit system—system in which selection, retention and promotion of government employees is based upon ability rather than political connections or party affiliation.
misdemeanor—criminal offense less serious than a felony. Punishable by fine and/or up to one year in jail.
moderate (centrist)—advocate of policies which are a mixture of, or somewhat between, liberalism and conservatism.
monarchy—government by a hereditary ruler, such as a queen or king.
monetary policy—government economic policy relating to the availability of credit and size of the money supply.
national interest—social, economic, strategic and ideological considerations that serve as the inspiration and basis for a nation's domestic and foreign policy.
national security—safety from attack or subversion that comes from military, economic and political struggle.
nonpartisan—favoring no political party.
Office of Management and Buget (OMB)—important agency within the Executive Office of the President. Powers and responsibilities include the review of proposed bills from departments, recommendations to the president on whether to veto or sign a bill, and preparation of the annual budget.
ombudsman—a public official whose job it is to act on complaints or problems from citizens.
override—repassage of a vetoed bill by a two-thirds majority in both chambers of Congress, so that it becomes law without the president's signature.
oversight—power and responsibility of Congress to maintain a close watch over the activities of the executive branch.
parliamentary procedure—formal rules of procedure that govern and regulate the proceedings of a legislature.
partisan—an idea, issue or project primarily supported by or favoring one political party.
party—group of people who work and organize together to win elections, to run governments and to represent a common set of beliefs, policies and values.
patronage—power of the president and other high-ranking officials to grant certain political favors in return for political support. Examples: power to nominate ambassadors, judges and executive branch officials; power to locate lucrative programs and construction projects in selected areas.
per capita—in economics, means "average per person."
petition—request to a public official seeking to correct a wrong or to influence public policy. Also, a method of placing a candidate's name on the ballot by getting a specified number of signatures.
platform—a comprehensive policy statement issued by a political party or a candidate during a campaign.
plurality—the highest number of votes, but not a majority (which is more than half).
political action committee (PAC)—special interest group that contributes money to political candidates who conform to the group's ideology or specific interests.
political appointee—high-ranking official of the executive branch who is appointed by the president. Secretaries, undersecretaries, regulatory commissioners and officers of government corporations are political appointees.
political science—one of the social sciences, dealing with the theory and practice of politics, government, public policy and public administration.
politics—policies, affairs or goals of a government or the parties within it. Also, the methods or tactics of campaigning and governing.
poll—series of interviews on a particular subject designed to measure public opinion.
pork barrel—a bill that gives funds or projects to the district of a particular legislator.
precedent—decision in a case that forms the basis for a future decision in a similar case. Much of our law and court decisions are based on precedents.
presidential press conference—formal session during which the president answers questions from reporters. Held as often as the president wishes.
press conference—a formal or informal interview given by a public figure to reporters by appointment; usually for the exchange of information where the reporters ask questions.
press secretary—chief spokesperson for the president, or other officials. The press secretary usually manages the flow of information from the government to the public.
pressure group—an organized interest group in which members share common views and objectives. Its members actively carry on programs to influence government officials and policies.
price supports—program through which the federal government aids farmers in times of low or unstable prices by buying crops at higher than free-market prices.
primary election—preliminary election for the nomination of candidates for office, for the choice of party commitment or for delegates to a party convention.
print media—informative materials that are read; e.g., newspapers, magazines, books, etc.
probable cause—justification for a search of a person or property by police when facts and circumstances would lead a reasonable person to conclude that a crime has been committed.
progressive tax—tax based on ability to pay. Those people with

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lower incomes pay a smaller percentage of income, while a larger percentage of high income is taxed. Example: the federal income tax.

propaganda—organized efforts to influence the thoughts, emotions, opinions and actions of people by means of words, pictures, music, symbols, etc.

public interest—describes groups or programs that do not benefit any specific group, but instead are designed to benefit society as a whole.

public works—projects such as highway construction, rural electrification and school and hospital contruction paid for by government, especially to create jobs in times of high unemployment.

quota—number of persons of a particular "category;" e.g., race, religion, ethnic group, region, sex, who must be included, hired or admitted.

ratification—refers to the passage of a treaty. Treaties differ from other bills in that they can be approved only by the Senate and require a two-third majority to pass.

reapportionment—a redrawing of political boundaries, such as those between congressional districts, based on the census undertaken at the beginning of each decade.

recall—a procedure by which a public official may be removed from office by vote of the people.

recession—significant decline in business activity, although not as serious as a depression.

red tape—derived from the color of the cotton tape in which official letters and documents were tied together. Means the following of long, bothersome procedures.

redress of grievances—right to petition the government in protest or in support of your interests.

reform—changes of a significant but limited nature in the policies and/or procedures of government, the law or other societal institutions and practices.

registration—official enrollment of persons for the administration of election, compulsory military service, rationing, lobbying or other laws.

regressive tax—tax in which all people pay the same percentage, regardless of their income. Examples: sales tax and property tax.

regulatory commission—a body created by Congress to regulate a specific area of the economy and society in the public interest. Has power similar to the legislature, to issue rules that have the force of law. Also has power similar to the legislature, to issue rules that have the force of law. Also has powers similar to the courts, to decide conflicts and interpret laws. Members (commissioners) are appointed by the president subject to Senate confirmation; they must be drawn from both the Republican and Democratic parties.

revenue sharing—refers to system set forth in the General Revenue Sharing Act of 1972 in which the federal government regularly turns over portions of its tax yield to local governments based upon a fixed formula.

revenues—income; money taken in by government from taxes and other sources.

revolution—changes of a widespread nature in the political, social and/or economic systems. Contrast with reform.

"revolving doors"—the back and forth movement of high-ranking officials between the federal government and the private sector. Reference is usually movement from a regulatory agency to the private group that is regulated.

rider—proposal that would be unlikely to be enacted by itself, but that is attached to bill that has a good chance of passing. Differs from an amendment in that it need not be related to the subject of the bill.

Rules Committee—exists only in the House. Decides on what procedure a bill will follow. For example, whether or not amendments may be added, how much debate will be allowed. A favorable rule can make passage more likely.

segregation—practice of requiring separate facilities for use by people of different races.

seniority—consecutive years of service. Often used in Congress to determine leadership assignments and allocate office space.

separation of powers—fundamental constitutional principle that each branch of government should have separate powers and should not usurp the powers of the others. Like checks and balances, was intended to prevent concentration of too much power in any one branch or individual.

special interest—describes groups that lobby the legislative and executive branches for projects, laws or regulations that benefit their members. Often associated with industrial, political, labor, environmental and religious groups.

spoils system—awarding of government jobs to political supporters and friends, without consideration of merit.

sponsor—member who officially signs his or her name to a bill as its author and sponsors its introduction into the chamber.

standing committee—regular committee that is responsible for a specific subject area. Presently there are 22 House and 15 Senate standing committees.

State of the Union Address—speech delivered annually by the president to a joint session (both houses) of Congress in which he discusses the "state of the union" and outlines his legislative program for the coming year.

status quo—existing state of affairs.

statute—law passed by a legislature.

subpoena—an order for a person to appear or surrender evidence (records, tapes, documents, memos, etc.) before a court or official body.

sunshine laws—laws requiring government agencies and legislative committees to open their sessions to the public unless there are overriding reasons, such as national security.

taxes—money paid by citizens, businesses and organizations to support the operations of government and the programs run by government at all levels. Taxes are compulsory but must be established by law.

unemployment—economic statistics reflecting the percentage of the work force that cannot find work.

unicameral—a legislature containing only one chamber.

unitary system—a system of government in which the central government is supreme and all other divisions derive their power from the central government; e.g., Great Britain.

veto—rejection by the president of a bill passed by Congress.

Virginia Plan—a set of 15 resolutions presented by Edmond Randolph of Virginia at the Constitutional Convention to amend the Articles of Confederation. They called for two separate houses in the legislative branch, only one of which would have been elected by the general population.

War Powers Act—legislation passed by Congress in 1973 to limit the power of the president to commit American troops abroad without congressional approval.

welfare—contributions by government to the economic security of its citizens. Welfare programs are generally for those who are unable to help themselves: e.g., the aged, the temporarily unemployed, the disabled and the handicapped.

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